

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN

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EDGEWOOD HIGH SCHOOL OF THE  
SACRED HEART, INC.,

Plaintiff,

Case No. 3:21-cv-0018-wmc

CITY OF MADISON, WISCONSIN,  
et al,

Defendants.

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DEPOSITION OF

MATTHEW TUCKER

April 29, 2022  
Madison, Wisconsin

Reported by: Cheri Winter, CSR

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p>WITNESS PAGE</p> <p>MATTHEW TUCKER</p> <p>Examination by Mr. Ingrisano 5</p> <p>Examination by Ms. Zylstra 224</p> <p style="text-align: center;">E X H I B I T S</p> <p>No. Description Identified</p> <p>Exhibit 37 Edgewood lighting application submitted February 2019 64</p> <p>Exhibit 38 Site Plan Verification submitted by Forward Electric 65</p> <p>Exhibit 39 Planning Division Staff Report, dated March 24, 2014 105</p> <p>Exhibit 40 Planning Division approval letter for Edgewood Campus Master Plan, April 22, 2014 154</p> <p>Exhibit 41 Planning Division approval letter for UW Master Plan, October 4, 2017 157</p> <p>Exhibit 42 Email exchange between Mr. Tucker and Shawn Schey 163</p> <p>Exhibit 43 Recommendation to repeal master plan from Mr. Strange to the Plan Commission, November 11, 2019 176</p> <p>Exhibit 44 Memo from Mr. Parks to Plan Commission, October 28, 2019 179</p>	<p style="text-align: right;">Page 4</p> <p>DEPOSITION OF MATTHEW TUCKER, called as a witness, taken at the instance of the Plaintiff, pursuant to Notice, before Cheri Winter, Certified Shorthand Reporter, and a notary public in and for the State of Wisconsin, at the law offices of Godfrey &amp; Kahn, S.C., One East Main Street, Suite 500, Madison, Wisconsin, on the 29th day of April, 2022, commencing at 9:01 a.m.</p> <p>APPEARANCES:</p> <p>For the Plaintiff:</p> <p>JONATHAN R. INGRISANO, ESQ. GODFREY &amp; KAHN, S.C. One East Main Street, Suite 500 Madison, Wisconsin 53701 608.257.0609 jingrisa@gklaw.com NOEL W. STERETT, Pro Hac Vice DALTON &amp; TOMICH, PLC 401 W. State Street, Suite 509 Rockford, Illinois 61101 815.986.8050 nsterett@daltontomich.com</p> <p>For the Defendants:</p> <p>SARAH A. ZYLSTRA, ESQ. TANNER JEAN-LOUIS, ESQ. BOARDMAN &amp; CLARK, LLP 1 South Pinckney Street, 4th Floor Madison, Wisconsin 53701 szylstra@boardmanclark.com TJeanLouis@boardmanclark.com</p> <p>Also present (telephonic): Kate M. Smith, Assistant City Attorney</p>
<p style="text-align: right;">Page 3</p> <p>EXHIBITS (Cont'd):</p> <p>No. Description Identified</p> <p>Exhibit 45 Excerpted email chain from Mr. Tucker to Brian Munson, Michael Elliot, et al., October 26, 2018 184</p> <p>Exhibit 46 UW Campus-Institutional District Master Plan 195</p> <p>Exhibit 47 Planning Division staff report, March 24, 2014 212</p> <p>PREVIOUSLY MARKED EXHIBITS:</p> <p>Page</p> <p>Exhibit 1 46</p> <p>Exhibit 2 142</p> <p>Exhibit 3 24</p> <p>Exhibit 5 140</p> <p>Exhibit 6 120</p> <p>Exhibit 7 56</p> <p>Exhibit 13 72</p> <p>Exhibit 18 203</p> <p>Exhibit 29 183</p> <p>Exhibit 30 183</p> <p>Exhibit 33 215</p>	<p style="text-align: right;">Page 5</p> <p>FRIDAY, APRIL 29, 2022, 9:01 A.M.</p> <p>--oOo--</p> <p>MATTHEW TUCKER,</p> <p>having been first duly sworn, was examined and testified as follows:</p> <p>--oOo--</p> <p>BY MR. INGRISANO:</p> <p>Q. Good morning. Could you please state your name and spell it for the record.</p> <p>A. Sure. Matthew William Tucker, M-a-t-t-h-e-w, W-i-l-l-i-a-m, T-u-c-k-e-r.</p> <p>Q. And what is your date of birth?</p> <p>A. [REDACTED]</p> <p>Q. And what's your current residential address?</p> <p>A. 5717 Crabapple Lane -- that's one word -- Madison, Wisconsin 53711.</p> <p>Q. Mr. Tucker, it's been more than 20 years since I've lived in Madison. Can you describe for me where that address is?</p> <p>A. Sure. It is on the southwest side of Madison, Crabapple Lane is an east-west street that runs off of Whitney Way, very close to the Orchard Ridge Elementary, Toki Middle School.</p> <p>Q. Thank you. And what's your current employer?</p> <p>A. I work for the City of Madison as the building</p>

<p style="text-align: right;">Page 6</p> <p>1 inspection division director.</p> <p>2 Q. Mr. Tucker, have you had your deposition taken</p> <p>3 before?</p> <p>4 A. I have.</p> <p>5 Q. How many times?</p> <p>6 A. Once, I believe.</p> <p>7 Q. What was that in relation to?</p> <p>8 A. A lawsuit in my position in the City of</p> <p>9 Madison as a zoning administrator.</p> <p>10 Q. About how long ago was that?</p> <p>11 A. A couple years ago, maybe three.</p> <p>12 Q. Do you recall who the parties were in that</p> <p>13 case?</p> <p>14 A. I do.</p> <p>15 Q. And who were they?</p> <p>16 A. It was the City of Madison and Adams Outdoor</p> <p>17 Advertising.</p> <p>18 Q. Can you summarize kind of what the general</p> <p>19 issue was in that litigation?</p> <p>20 A. They had interest in work related to</p> <p>21 advertising signs, commonly referred to as billboards,</p> <p>22 and the city's ordinance did not allow certain aspects</p> <p>23 of what they wished to do.</p> <p>24 Q. So you were here for Mr. Hank's deposition on</p> <p>25 Wednesday; correct?</p>	<p style="text-align: right;">Page 8</p> <p>1 science.</p> <p>2 Q. Great. And what year did you graduate from</p> <p>3 West?</p> <p>4 A. 1990.</p> <p>5 Q. And what year did you graduate from Oshkosh?</p> <p>6 A. 1995.</p> <p>7 Q. Where did you go to grade school?</p> <p>8 A. I went to Our Lady Queen of Peace in Madison.</p> <p>9 And I went to Van Hise for 8th grade, which is now, I</p> <p>10 believe, called Hamilton Middle School.</p> <p>11 Q. Can I ask why you made a change in 8th grade?</p> <p>12 A. My parents and I negotiated a change to my</p> <p>13 educational location.</p> <p>14 Q. I don't understand what that means, I'm sorry.</p> <p>15 A. I didn't want to go to Queen of Peace anymore</p> <p>16 and they were allowing me to go to Van Hise. That's</p> <p>17 probably the best way of describing it.</p> <p>18 Q. Can you describe why you didn't want to go to</p> <p>19 QP?</p> <p>20 A. I was not having a good experience there.</p> <p>21 Q. Based on students, interaction, or was it more</p> <p>22 of an administrative issue?</p> <p>23 A. Probably both. It's hard -- I mean, it was</p> <p>24 quite a long time ago so I recall the structure being</p> <p>25 not conducive to actually some of the other members of</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Yes.</p> <p>2 Q. So you heard my spiel on kind of the</p> <p>3 deposition rules and what we will try to accomplish here</p> <p>4 today in terms of speaking and not talking over each</p> <p>5 other, right?</p> <p>6 A. Yes.</p> <p>7 Q. So just to recap, I will try to let you finish</p> <p>8 your answer before I ask my next question. And if you</p> <p>9 could please try to let me finish my question before you</p> <p>10 begin your response; okay?</p> <p>11 A. Yes.</p> <p>12 Q. We will do our best to have verbal responses</p> <p>13 today, please.</p> <p>14 A. Yes.</p> <p>15 Q. Great. And if there comes a time when your</p> <p>16 counsel objects to a question, please let her complete</p> <p>17 her objection before you begin your answer unless she</p> <p>18 instructs you not to answer; okay?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Great. Can you summarize your</p> <p>21 educational history for me?</p> <p>22 A. How far do you want me to go back?</p> <p>23 Q. Why don't we start with high school.</p> <p>24 A. I went to Madison West High School, and I went</p> <p>25 to the University of Wisconsin, Oshkosh, bachelor's of</p>	<p style="text-align: right;">Page 9</p> <p>1 my family, too, so we just chose a different path. And</p> <p>2 I was -- they let me be a part of that decision, which</p> <p>3 was great.</p> <p>4 Q. Sure. What was your -- you may have said it</p> <p>5 but I missed it.</p> <p>6 What was your undergraduate program?</p> <p>7 A. I have an undergraduate in geography, a</p> <p>8 bachelor's in science.</p> <p>9 Q. Any postgraduate education?</p> <p>10 A. No.</p> <p>11 Q. Any legal training?</p> <p>12 A. No.</p> <p>13 Q. Are you married?</p> <p>14 A. I am.</p> <p>15 Q. And do you have any children?</p> <p>16 A. I do.</p> <p>17 Q. What are their ages?</p> <p>18 A. I have a 15 year old and a 13 year old.</p> <p>19 Q. And can I ask where they attend school?</p> <p>20 A. The 15 year old is freshman at Memorial High</p> <p>21 School, and the 13 year old is a 7th grader at Toki</p> <p>22 Elementary -- or Middle School, excuse me.</p> <p>23 Q. So you describe yourself as the building</p> <p>24 inspector division director; is that right?</p> <p>25 A. That's correct.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. How long have you held that title?</p> <p>2 A. I started that position in July of last year.</p> <p>3 Q. Was that the position that was vacated by</p> <p>4 George Hank on his retirement?</p> <p>5 A. Yes.</p> <p>6 Q. So you assumed his duties, his role?</p> <p>7 A. Yes.</p> <p>8 Q. Prior to that, your position was as zoning</p> <p>9 administrator; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. How long had you been in that position?</p> <p>12 A. I started with the City of Madison in June of</p> <p>13 2005, and I held that position continuously up till July</p> <p>14 of last year.</p> <p>15 Q. And where were you employed before June of</p> <p>16 2005?</p> <p>17 A. I worked for the city of Oshkosh, Wisconsin.</p> <p>18 Q. In what capacity?</p> <p>19 A. I was a city planner and I assumed zoning</p> <p>20 administrator duties in that city.</p> <p>21 Q. So you heard George Hank's testimony regarding</p> <p>22 his role and responsibilities as the building inspection</p> <p>23 division director, did you not?</p> <p>24 A. I did.</p> <p>25 Q. During his service in that capacity was there</p>	<p style="text-align: right;">Page 12</p> <p>1 officers. And there is a number of them. I believe</p> <p>2 there is six of them that -- actually, there is three of</p> <p>3 them -- well, hold on.</p> <p>4 So we had an assistant zoning administrator.</p> <p>5 We had changed one of the zoning enforcement officers</p> <p>6 into a second assistant zoning administrator in 2019,</p> <p>7 2018. So we ended up basically had two assistant zoning</p> <p>8 administrators and four zoning code enforcement officers</p> <p>9 who reported to me. And there is a clerical person who</p> <p>10 in tangentially reporting to me dually with a</p> <p>11 supervisor.</p> <p>12 Q. So I count eight. Is that fair?</p> <p>13 A. It should be --</p> <p>14 Q. Including you?</p> <p>15 A. It should be six -- oh, and seven, including</p> <p>16 me. And eight would be the clerical person. So, yes.</p> <p>17 Q. How do you describe -- let me ask you this:</p> <p>18 What were your responsibilities as Madison's</p> <p>19 zoning administrator during the time of period we talked</p> <p>20 about?</p> <p>21 A. Well, the position description that's on file</p> <p>22 with the city describes the administration and</p> <p>23 enforcement of the city's zoning and sign control</p> <p>24 ordinance. And I also managed other duties as assigned.</p> <p>25 And so any variety of types of private</p>
<p style="text-align: right;">Page 11</p> <p>1 anything -- or looking at his time in that capacity, was</p> <p>2 there anything he testified to on Wednesday that you</p> <p>3 thought to be false about the roles and responsibilities</p> <p>4 of his division?</p> <p>5 A. Anything? I mean, I --</p> <p>6 Q. To the best of your recollection.</p> <p>7 A. To the best of my recollection, I felt like he</p> <p>8 had paraphrased the position pretty well, yeah.</p> <p>9 Q. With respect to, let's say, the new</p> <p>10 administration, right, the building inspection division</p> <p>11 under your supervision.</p> <p>12 Have you instituted any changes from how</p> <p>13 George Hank ran that division?</p> <p>14 A. No.</p> <p>15 Q. I'm going to focus on kind of your</p> <p>16 responsibilities now when you were zoning administrator.</p> <p>17 In that timeframe of -- I'm going to focus</p> <p>18 mostly on the timeframe of 2014 -- 2013-2014 through,</p> <p>19 let's just say, 2020; okay?</p> <p>20 During that time -- I'm not asking for any</p> <p>21 individual names -- but who generally reported to you</p> <p>22 when you were the zoning administrator? How was that</p> <p>23 zoning administration department laid out from a chart</p> <p>24 standpoint?</p> <p>25 A. Sure. We have zoning code enforcement</p>	<p style="text-align: right;">Page 13</p> <p>1 property-related matters I may have involvement in.</p> <p>2 Q. So these other duties that you're talking</p> <p>3 about, how did those come across your desk?</p> <p>4 A. Usually through collaboration with George. I</p> <p>5 also worked very closely with the planning director for</p> <p>6 the city, because the zoning in Madison is very closely</p> <p>7 connected to city planning. It's the principal tool for</p> <p>8 implementation of city plans.</p> <p>9 So I would spend -- I would spend quite a bit</p> <p>10 of time working with the planning director and her</p> <p>11 staff, and I would also interact with other city</p> <p>12 agencies because there was overlap or responsibility in</p> <p>13 the zoning section that would connect to others. It's</p> <p>14 like city engineering, traffic engineering, the fire</p> <p>15 departments, the city's real estate department. Just a</p> <p>16 variety of agencies.</p> <p>17 Q. Sure. What's the difference between zoning</p> <p>18 administration and planning?</p> <p>19 And so as I understand it, at least it</p> <p>20 includes kind of zoning being the implementation</p> <p>21 mechanism for the planning department; is that right?</p> <p>22 A. Yeah, we often talk about it in those words,</p> <p>23 but we also talk about it as being the law relative to</p> <p>24 the use of land and the law for structures and</p> <p>25 improvements on property. So it has multiple functions</p>

<p style="text-align: right;">Page 14</p> <p>1 in that regard.</p> <p>2 Q. With respect to the dispute and the</p> <p>3 controversies involving Madison Edgewood's athletic</p> <p>4 field here in, let's just say, the 2017, 2018, 2019 to</p> <p>5 2020 timeframe, you had involvement with that as the</p> <p>6 zoning administrator; correct?</p> <p>7 A. I did.</p> <p>8 Q. Would you say that that fell -- did your</p> <p>9 involvement fall within the contours of that position</p> <p>10 description on file with the city or was it more of one</p> <p>11 of those other duties that you could be assigned from</p> <p>12 time to time?</p> <p>13 A. I believe it would be under the principal</p> <p>14 duties of the zone administrator.</p> <p>15 Q. Administration and enforcement of the zoning?</p> <p>16 A. Uh-huh.</p> <p>17 Q. I'm sorry, that's a yes?</p> <p>18 A. Yes, sorry. My first one.</p> <p>19 Q. Hey, we're 15 minutes in. That's actually not</p> <p>20 bad. I have seen a lot worse.</p> <p>21 So I asked you about distinction -- well, let</p> <p>22 me ask you this:</p> <p>23 Help me understand the distinction between</p> <p>24 building inspection and zoning administration.</p> <p>25 A. Sure. So the building inspection division as</p>	<p style="text-align: right;">Page 16</p> <p>1 A. I'll probably give you a good example. We</p> <p>2 might have a scenario where someone has opened a</p> <p>3 restaurant/tavern, which is basically a restaurant that</p> <p>4 includes alcohol service.</p> <p>5 The building code staff won't have building</p> <p>6 codes. They have a distinction about the service of</p> <p>7 alcohol. They would be -- it doesn't matter to them.</p> <p>8 The zoning staff would administer the zoning</p> <p>9 code, would look and follow the rules of the zoning code</p> <p>10 that treat the use of a restaurant tavern different than</p> <p>11 use of a restaurant.</p> <p>12 Q. Got it. Is it fair to say that uses of</p> <p>13 property is going to fall under zoning administration in</p> <p>14 terms of enforcement as opposed to kind of the technical</p> <p>15 features of a building or space will fall under building</p> <p>16 inspection? Is that a fair distinction I'm making?</p> <p>17 A. I wouldn't necessarily put it that way. We</p> <p>18 may be saying the same thing, but there is land use and</p> <p>19 then there is use of buildings, too, like the occupancy</p> <p>20 of buildings.</p> <p>21 And the building code is principally looking</p> <p>22 at the occupancy of buildings from a life safety</p> <p>23 perspective where the zoning code is looking at the land</p> <p>24 use, the buildings, where the buildings are located on</p> <p>25 the property, factors such as that.</p>
<p style="text-align: right;">Page 15</p> <p>1 George -- I think he did an excellent job of laying out</p> <p>2 the variety of things that we do.</p> <p>3 And the building inspection, zoning is part of</p> <p>4 the regulations for developments. We're associated with</p> <p>5 permitting, permits, building permits and use approvals,</p> <p>6 and we're associated with enforcement.</p> <p>7 So it falls into building inspection because</p> <p>8 that's sort of the common duties of that section, also.</p> <p>9 That's why it placed there under Madison structure.</p> <p>10 Q. So in the building inspection side he's got</p> <p>11 kind of enforcement personnel; correct?</p> <p>12 A. There are enforcement personnel in the</p> <p>13 building inspectors. There are housing inspectors and</p> <p>14 property maintenance inspectors and weights and measures</p> <p>15 inspectors.</p> <p>16 Q. And you had mentioned that you had at various</p> <p>17 times under zoning administration, depending on</p> <p>18 timeframe, two or four zoning code enforcement staff; is</p> <p>19 that right?</p> <p>20 A. Correct.</p> <p>21 Q. So what would a zoning code enforcer -- I'll</p> <p>22 use the word "enforcer" -- that might be not be the</p> <p>23 right title -- the zoning code enforcer enforced versus</p> <p>24 what a building code enforcement personnel would</p> <p>25 enforce?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Just to be clear on a going forward basis here</p> <p>2 today, unless I kind of advise you otherwise I'm going</p> <p>3 to be talking about your responsibilities and roles as</p> <p>4 zoning administrator principally.</p> <p>5 If I want to talk to you about your current</p> <p>6 role about a building inspection division director I</p> <p>7 will make that very clear; okay?</p> <p>8 A. Thank you. That will be helpful.</p> <p>9 Q. So I'm focused on zoning administration only</p> <p>10 at this point.</p> <p>11 A. Okay.</p> <p>12 Q. In that tenure that you had that position.</p> <p>13 I'm not going to be talking about any changes that may</p> <p>14 have occurred in zoning administration after you left</p> <p>15 that zoning administration role; okay?</p> <p>16 A. Okay.</p> <p>17 Q. So the zoning code enforcement staff that you</p> <p>18 had under you, did they have the same enforcement tools</p> <p>19 at their disposal that George Hank described on the</p> <p>20 building inspection side?</p> <p>21 A. Yes.</p> <p>22 Q. Official notices, citations?</p> <p>23 A. The citation is an enforcement tool. An</p> <p>24 official notice is a warning. It's sort of like that</p> <p>25 type of a communication.</p>

<p style="text-align: right;">Page 18</p> <p>1 Q. Sure. And that was what I understood on 2 building inspection, too. So it's the same? From your 3 understanding it's the same? 4 A. Yes. 5 Q. Okay. Can you describe Tim Parks' role as you 6 understood it as you were zoning administrator, what was 7 Tim Parks' role as planning administrator? 8 A. Tim Parks is one of the development review 9 planners. Do you me just focusing here on a little bit 10 of the topic? 11 Q. Yes, please. 12 A. Tim is also generally assigned or assumed 13 reviews related to Edgewood over time when I was in the 14 zoning administrator position. 15 So he would be the person that I would be 16 working with generally in the planning section. We like 17 to refer to them as actually like shepherds of projects, 18 and he was, I would say, the point person for matters 19 related to Edgewood from planning. 20 Q. To the extent you know, did Edgewood fall 21 under his purview based on geographic considerations or 22 was it a type of property owner? What was the -- how 23 did Edgewood fall under his purview? 24 A. So my understanding was there was a person 25 prior to Tim that had previously been working on matters</p>	<p style="text-align: right;">Page 20</p> <p>1 is a section in the city zoning code that was written 2 and then ultimately mapped over certain places in the 3 city that the city decided were appropriate for that 4 zoning classification at the time of the adoption of the 5 maps. 6 The places are -- that's more of like 7 vernacular when we're talking about institutions like 8 the University of Wisconsin-Madison, Edgewood, which is 9 like a high school, college, and grade school. And I 10 think that's just the three. You maybe have high 11 schools. 12 They weren't zoned Campus-Institutional prior 13 to 2013, because the district didn't exist. 14 Q. So I want to make sure I get my terminology 15 right, at least by the third deposition in the case. 16 When you refer to Edgewood, do you refer to 17 Edgewood as a Campus-Institutional District or do you 18 refer to basically a place that is a zoned 19 Campus-Institutional District? 20 A. Refer to it in what regards? 21 Q. Well, would it be technically incorrect for me 22 to say that Edgewood is a Campus-Institutional District? 23 A. I believe that would be technically incorrect, 24 yeah. 25 Q. So correct me, then. Edgewood is a, what,</p>
<p style="text-align: right;">Page 19</p> <p>1 related to Edgewood, and those effectively -- upon that 2 person's retirement, that person's responsibility was 3 transferred over to Tim. So he was on notice. 4 It would generally be the staff person 5 assigned to the matters related to that or inquiries 6 related to that property, they would be directed to him 7 for whatever planning chose to do with it. 8 Q. Do you know when he kind of assumed that role 9 over Edgewood? 10 A. I believe it was probably, I want to say 11 around 2006 to 2007 maybe. 12 Q. Did other Campus-Institutional districts have 13 kind of -- well, I'll just paraphrase it as a go-to 14 person in the Planning Division? 15 MS. ZYLSTRA: Objection. Form, foundation. 16 You can answer. 17 Q. To the extent you know. 18 A. The Campus-Institutional District came to be 19 in -- are you talking about the zoning district or just 20 those places? 21 Q. The Campus-Institutional zoning district -- 22 well, let me ask you this: 23 What's the distinction between the 24 Campus-Institutional zoning district and the places? 25 A. Well, the Campus-Institutional zoning district</p>	<p style="text-align: right;">Page 21</p> <p>1 with respect to Campus-Institutional District? 2 A. I think Edgewood is an institution in our 3 community that also is zoned in the Campus-Institutional 4 zoning district. 5 Q. Got it. So institutions -- I guess it's 6 almost kind of self-defining. 7 Institutions are zoned Campus-Institutional 8 Districts? 9 A. Not necessarily. 10 Q. Okay. 11 A. So the mapping was a different discussion. 12 And there are probably institutions that we would think 13 are institutions that are not zoned Campus-Institutional 14 zoning district. 15 Q. Got it. I think I understand. Nice to get 16 that clear. So I think we kind of got off track here a 17 little bit, not due to any fault of yours. 18 Did you tell me when you believed Tim Parks 19 kind of came to be generally responsible for 20 Edgewood-related projects? 21 A. Yeah, I believe it was like 2006 to 2007, 22 around then. To pin it down, it would probably be best 23 to -- they had a project that came through around then, 24 and I think it was at the college to build a dorm or 25 something along those lines.</p>



<p style="text-align: right;">Page 22</p> <p>1 I recall the project. And we'll just say the</p> <p>2 file that the city had, which is the ongoing kind of</p> <p>3 record from planning, was transferred from that retiree</p> <p>4 on to an active staff, which would have been Tim.</p> <p>5 Q. I think where we diverged off of my train of</p> <p>6 thought was -- let me ask you this question:</p> <p>7 To your knowledge, are the other institutions</p> <p>8 that are zoned as Campus-Institutional districts, do</p> <p>9 they have kind of a go-to person in the Planning</p> <p>10 Division?</p> <p>11 MS. ZYLSTRA: Objection. Foundation. If you</p> <p>12 know.</p> <p>13 A. I don't know for sure.</p> <p>14 Q. So, for example, I believe Madison Memorial is</p> <p>15 zoned Campus-Institutional District; correct?</p> <p>16 A. Yes.</p> <p>17 Q. If you had a question for someone in the</p> <p>18 planning department related to Madison Memorial, is</p> <p>19 there a particular person that you would go to that you</p> <p>20 recognize kind of handles Memorial?</p> <p>21 A. I don't believe so, because so rarely do</p> <p>22 things come up from Memorial. People tend to take an --</p> <p>23 assume a responsibility when there is regular and</p> <p>24 recurring or frequent matters that a person becomes</p> <p>25 assigned, if you will, I'll use that term, just because</p>	<p style="text-align: right;">Page 24</p> <p>1 you know, a place like UW is very large. A place like</p> <p>2 Madison College is the right size, also, which would</p> <p>3 probably have an individual that would be kind of</p> <p>4 handling the recurring projects.</p> <p>5 Q. And to your knowledge, is that a go-to person</p> <p>6 for Madison College?</p> <p>7 A. I believe there is, but I don't know who that</p> <p>8 is now, so yeah.</p> <p>9 Q. Thank you. Let's talk about outdoor lighting</p> <p>10 applications for a little bit.</p> <p>11 I'll hand you what was marked in Mr. Hank's</p> <p>12 deposition as Exhibit 3. Do you recognize that</p> <p>13 document, sir?</p> <p>14 A. I do.</p> <p>15 Q. And can you describe it for me and tell me</p> <p>16 what it is?</p> <p>17 A. Sure. So this is a printout copy of a report</p> <p>18 that is generated from the city's site plan review</p> <p>19 software, which is utilized to track certain processes</p> <p>20 that the city is responsible for handling on private</p> <p>21 property.</p> <p>22 Q. And do you know -- with respect to this</p> <p>23 particular document, do you know who input the data that</p> <p>24 appears in the fields in this document?</p> <p>25 A. I'm going to make just a common, but I think a</p>
<p style="text-align: right;">Page 23</p> <p>1 they have the institutional knowledge transferred to</p> <p>2 them, or they carry the institutional knowledge from the</p> <p>3 past.</p> <p>4 Q. Sure. Is there a person at the Planning</p> <p>5 Division who's been assigned to be the go-to person for</p> <p>6 issues for University of Wisconsin-Madison?</p> <p>7 A. I don't know if one individual has been</p> <p>8 assigned to their projects.</p> <p>9 Q. So is it your understanding or belief that</p> <p>10 Edgewood has its own person at the Planning Division</p> <p>11 because of just there being recurring or frequent issues</p> <p>12 that arise?</p> <p>13 A. I would say it probably a little bit</p> <p>14 differently. It's just at the right size and scale and</p> <p>15 amount and number of projects that an individual might</p> <p>16 take it, which is common.</p> <p>17 For example, like a project like Hilldale</p> <p>18 might also have an individual, because it's -- as you</p> <p>19 probably -- you're from Madison, I recall, you mentioned</p> <p>20 -- or you grew up here -- from George's deposition.</p> <p>21 If you recall Hilldale when the parking lot</p> <p>22 was out front to what it was today, they kind of have</p> <p>23 one person that's kind of a point person as a project</p> <p>24 evolves to carry institutional knowledge.</p> <p>25 So it's at the right size, if you would. And</p>	<p style="text-align: right;">Page 25</p> <p>1 very confident assumption on this, because I know who</p> <p>2 does this mostly in our office.</p> <p>3 So Christina Thiele, the person that's</p> <p>4 identified here as the approver under zoning, she would</p> <p>5 receive the application, she would set up the</p> <p>6 application in our software, she would enter all of the</p> <p>7 contact information that was part of the application.</p> <p>8 She would set up the agency reviews. In this</p> <p>9 case you see lighting review and that there is a</p> <p>10 default, which is a zoning review because this is a</p> <p>11 thing that we manage for the City of Madison, this</p> <p>12 application.</p> <p>13 So she would have keyed in. And then Steve</p> <p>14 Rewey would be assigned a step. And so he, on February</p> <p>15 27th, would have keyed in the information.</p> <p>16 I will note, though, sometimes Steve would,</p> <p>17 like, call in and have someone enter the information on</p> <p>18 his behalf and that would show up and, if we needed to,</p> <p>19 dig deep and see who actually may have advanced it. Our</p> <p>20 assumption is that Steve would -- is authorizing this</p> <p>21 entry.</p> <p>22 Q. Sure. Authorizing the entirety of the entry</p> <p>23 or just the entry of his line item?</p> <p>24 A. His piece, which was lighting review.</p> <p>25 Q. So this was an outdoor lighting application ,</p>

<p style="text-align: right;">Page 26</p> <p>1 right, here on Exhibit 3 that's being reflected?</p> <p>2 A. Yes, I believe so.</p> <p>3 Q. And so, as I'm understanding you saying, an</p> <p>4 outdoor lighting application would be received by the</p> <p>5 zoning administration department?</p> <p>6 A. Not always. The outdoor lighting applications</p> <p>7 that relate to land use or site approvals tend to come</p> <p>8 into the zoning office or they come into -- or sometimes</p> <p>9 they may arrive to building inspection. They are routed</p> <p>10 over to zoning for entry and processing.</p> <p>11 MR. INGRISANO: Can you read back that answer,</p> <p>12 please.</p> <p>13 (Record read)</p> <p>14 Q. Sir, can you distinguish for me the difference</p> <p>15 between a lighting application that relates to land use</p> <p>16 and site approval versus a lighting application --</p> <p>17 outdoor lighting application that relates to something</p> <p>18 else?</p> <p>19 MS. ZYLSTRA: I'll object to form. You can</p> <p>20 answer.</p> <p>21 A. Sure. I'll provide an example. Sometimes we</p> <p>22 will receive applications -- and by "we" I will say the</p> <p>23 building inspection division -- we will receive</p> <p>24 applications to light an existing private parking lot,</p> <p>25 or change lighting on an existing parking lot.</p>	<p style="text-align: right;">Page 28</p> <p>1 in and makes some determinations about process. I am</p> <p>2 not exactly sure if -- it might have originated coming</p> <p>3 directly to zoning by Jennifer Luhman from Forward</p> <p>4 Electric, or it might have been entered directly to the</p> <p>5 -- or delivered directly, hand-delivered to the building</p> <p>6 inspection office.</p> <p>7 I think it came in via email because I</p> <p>8 remember seeing a revision, an initial application and</p> <p>9 revision almost immediately.</p> <p>10 Can you repeat the question? I --</p> <p>11 MR. INGRISANO: Sure. Can you repeat my</p> <p>12 question back, please.</p> <p>13 (Record read)</p> <p>14 A. So because the staff have experience in these</p> <p>15 types of matters, they, as far as their triage, have</p> <p>16 sort of a process knowledge of talking to each other in</p> <p>17 determining the right path for something, for lighting</p> <p>18 submission. And that the lighting of places related to</p> <p>19 a use such as an athletic field or also the lighting in</p> <p>20 -- an unusual lighting application like this, which is</p> <p>21 unique in that lighting of this type is relatively rare,</p> <p>22 would naturally trigger a closer look in a decision.</p> <p>23 Parking lot lighting is very routine for us.</p> <p>24 In fact, parking lot lighting is typically reviewed at</p> <p>25 the time of site plan review for the development, unless</p>
<p style="text-align: right;">Page 27</p> <p>1 The parking facility pre-exists, and the</p> <p>2 lighting application is received and processed directly</p> <p>3 by the plan review section, and it doesn't find its way</p> <p>4 to zoning. It would not go through a process as shown</p> <p>5 on Exhibit 3.</p> <p>6 Q. So you use the example of an existing parking</p> <p>7 lot. So that would be -- that would not fall under the</p> <p>8 category of a lighting application that relates to land</p> <p>9 use and site approval?</p> <p>10 A. That's correct.</p> <p>11 Q. And if it's related to, say, an existing</p> <p>12 feature like a parking lot, you're saying it would then</p> <p>13 kind of be received and input by the building inspection</p> <p>14 group?</p> <p>15 A. Most likely, yes.</p> <p>16 Q. So in this particular case with Exhibit 3,</p> <p>17 this was a lighting application to light an existing</p> <p>18 athletic field; correct?</p> <p>19 A. Yes.</p> <p>20 Q. So why didn't this fall into something that</p> <p>21 would have been entered into and received by the</p> <p>22 building inspection, instead it's being treated as a</p> <p>23 lighting application that relates to a land use and site</p> <p>24 approval?</p> <p>25 A. The staff triage, the applications that come</p>	<p style="text-align: right;">Page 29</p> <p>1 the parking lot lighting is coming after the fact or</p> <p>2 being changed after the fact.</p> <p>3 Q. Looking at Exhibit 3, sir, it says, in the</p> <p>4 field where it says "Project Type." Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. It says, "Permitted Use Site Plan Review." Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Based on your understanding of the systems</p> <p>10 employed, who would have keyed that in or chosen that</p> <p>11 field?</p> <p>12 A. That is a default field that is selected by</p> <p>13 the person who sets up, who would enter all the contact</p> <p>14 information into the record.</p> <p>15 So Christina Thiele would have selected this</p> <p>16 default. I believe there is four defaults you get to</p> <p>17 pick from.</p> <p>18 Q. What are those defaults?</p> <p>19 A. There is permitted use site plan review. I</p> <p>20 believe there is a similar approval for conditional use.</p> <p>21 There is an approval for alterations. I don't recall</p> <p>22 the precise phrasing. There is one for alterations of</p> <p>23 plan developments. One for alterations of conditional</p> <p>24 uses.</p> <p>25 There is one that relates to land use</p>



<p style="text-align: right;">Page 30</p> <p>1 applications that's kind of a continuation of matters  2 that go on to the city's Plan Commission, like zoning  3 map amendments, demolitions and conditional uses.  4 Q. That sounds like more than four to me.  5 A. I think there is five. Permitted use,  6 conditional use, alteration to conditional use,  7 alteration plan development, and land use application  8 continuation. I think there is just five.  9 Q. In this particular instance, Christina has got  10 to figure out which is the appropriate category to put  11 this under?  12 A. Correct.  13 Q. And she made the determination that a  14 permitted use site plan review was the appropriate one?  15 A. Yes.  16 Q. And does that entail necessarily her  17 conclusion that these lights would involve a permitted  18 use of the property?  19 MS. ZYLSTRA: Objection. Form, foundation.  20 You can answer.  21 A. No.  22 Q. What would that -- well, let me ask you this:  23 Do you believe she properly coded this as a  24 permitted use site plan review?  25 A. I think it was the correct choice of the</p>	<p style="text-align: right;">Page 32</p> <p>1 piece of it.  2 And the other piece of it is it's the default  3 tool that we use when things don't fit into any other  4 category. Like, if we had one that said,  5 "Campus-Institutional site plan review," that would be  6 fairly appropriate.  7 But of the ones that we have selected by  8 process of deduction, they end up selecting that, and it  9 has -- it doesn't have bearing on our determination of  10 the use; it's just how we process the applications in  11 our software.  12 Q. If you go down and look where it says "Status  13 Closed," what does, in your experience, status closed  14 indicate on a form such as this?  15 I'll ask about generally first before I ask  16 about this particular case. But when a status is listed  17 as being closed, what are the things that that could  18 indicate?  19 A. Status closed is a workflow step, and it means  20 that this record was -- an action was taken to -- I  21 would use the term "finish" this record. Reviews have  22 been completed, it had been placed in a status called  23 "approved" and then it gets advanced to a closed status.  24 Q. After it goes from the -- we're talking about  25 workflow, right. You've got the approved status and</p>
<p style="text-align: right;">Page 31</p> <p>1 choices given.  2 Q. How is a permitted use site plan review --  3 what made it the correct choice?  4 A. When they are trying to figure out how to  5 forward the record for reviews, they would use a process  6 of deduction. It doesn't fit into the other categories  7 and this is the catchall category.  8 Q. Does the phrase "permitted use" relate to or  9 refer to the lights itself or how the property is  10 presently being used or some other qualification?  11 MS. ZYLSTRA: Object to form. You can answer.  12 A. I'm not understanding that question. You're  13 not asking about Exhibit 3, are you?  14 Q. Well, with respect to Exhibit 3 and the field,  15 permitted use site plan review, we're talking -- what  16 does that permitted use site plan, what does that mean;  17 what's a permitted use site plan?  18 MS. ZYLSTRA: Object to form. You can answer.  19 A. A permitted use site plan review, from a  20 processing standpoint, is a type of a review that  21 doesn't imply a special approval as necessary, like a  22 conditional use, like a planned development alteration.  23 It implies that -- that a -- from a process  24 standpoint, it's not defaulting to including reviewing  25 agencies and committees from -- in general, that's one</p>	<p style="text-align: right;">Page 33</p> <p>1 then it moves into closed. What happens after that,  2 generally speaking?  3 A. The matter is archived. There may be other  4 steps that follow up, such as permit issuance,  5 construction, inspection.  6 Q. Yeah, I mean, when we're talking about  7 workflow where does the work flow after it's -- when you  8 have it approved -- this was approved for lighting  9 review and by zoning review; correct?  10 MS. ZYLSTRA: Object to form.  11 Q. Exhibit 3?  12 MS. ZYLSTRA: Object to form. You can answer.  13 A. The report says approved, lighting review and  14 zoning review, and what we believe this means is this  15 process was closed.  16 Q. What process?  17 A. The site plan review process.  18 Q. Got it. So the lighting review by Steve  19 Rewey, he was looking at. And now we are talking about  20 Exhibit 3, I think, specifically.  21 But the lighting review by Steve Rewey on  22 Exhibit 3, that entailed him looking at the technical  23 specifications of the application and comparing it to  24 the requirements of 10.085; correct?  25 A. Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. And he or someone on his behalf entered the</p> <p>2 status of approved; correct?</p> <p>3 A. Correct.</p> <p>4 Q. So it reflects his assessment that it met the</p> <p>5 technical specifications?</p> <p>6 A. Yes.</p> <p>7 Q. And when it says "reviewed February 27, 2019,"</p> <p>8 is that the date in which the status was changed to</p> <p>9 "approved" or what determines the review date?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 A. That would be the date the status was change</p> <p>12 to approved.</p> <p>13 Q. As the zoning administrator, would you have</p> <p>14 reviewed Mr. Rewey's work in basically signifying</p> <p>15 approved status for the lighting review?</p> <p>16 A. No.</p> <p>17 Q. Same question for zoning review. So on</p> <p>18 Exhibit 3, Christina Thiele -- is that how you pronounce</p> <p>19 it?</p> <p>20 A. Yes.</p> <p>21 Q. So Christina Thiele was the reviewer who was</p> <p>22 checking the zoning review for this application; is that</p> <p>23 right?</p> <p>24 MS. ZYLSTRA: Object to form. You can answer.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 did you do with the Edgewood light application?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you do that? What raised that issue</p> <p>4 for you that caused you to go back after she had issued</p> <p>5 that approval to review that work?</p> <p>6 A. We wanted to be clear, as clear as we could</p> <p>7 be, with her limiting software, the city's position in</p> <p>8 regard to the lighting request by Edgewood.</p> <p>9 And I wanted to discuss with her, her</p> <p>10 understanding of what her approval meant in advancing</p> <p>11 the workflow.</p> <p>12 Q. How often did you -- after an approval was</p> <p>13 issued on an application like this by your zoning review</p> <p>14 staff, how often did you go back after the fact and ask</p> <p>15 them to explain the impact or their understanding of the</p> <p>16 impact of their work?</p> <p>17 MS. ZYLSTRA: Object to form. You can answer.</p> <p>18 A. I wouldn't say routinely, but periodically</p> <p>19 that happens to understand their determination.</p> <p>20 Q. Sure. Did you know prior to March 1 that she</p> <p>21 was reviewing this lighting application?</p> <p>22 A. I did not.</p> <p>23 Q. How did you become aware on March 1 or after</p> <p>24 that she had advanced the workflow to approved?</p> <p>25 A. I think we -- I found out looking when I was</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. She worked on this application; is that right?</p> <p>2 MS. ZYLSTRA: Object to form. You can answer.</p> <p>3 A. She advanced the workflow on this application.</p> <p>4 Q. And for her to change, to make the approved</p> <p>5 status, to enter that into approved status, what</p> <p>6 workflow did she have to advance to be able to do that?</p> <p>7 A. There is a select -- a drop down selectable in</p> <p>8 the workflow that you select.</p> <p>9 Q. But substantively -- well, let me ask you</p> <p>10 this:</p> <p>11 Did you ever review Christina's denoting of</p> <p>12 the zoning review on Exhibit 3 as being approved?</p> <p>13 A. No.</p> <p>14 Q. You didn't check her work and confirm that it</p> <p>15 had been properly marked as approved?</p> <p>16 A. Well, after the fact that we had discovered</p> <p>17 that this had happened, we did --I did check with her</p> <p>18 and check her work to understand what her understanding</p> <p>19 of her approval meant with this application.</p> <p>20 Q. And in doing that review after the fact -- so</p> <p>21 let me ask you this:</p> <p>22 You did that review after the fact, after</p> <p>23 March 1?</p> <p>24 A. Yes. Right.</p> <p>25 Q. You went back and said, hey, Christina, what</p>	<p style="text-align: right;">Page 37</p> <p>1 looking into the matter. Someone, I can't recall who,</p> <p>2 it may have been Nathan Wautier, it may have been John</p> <p>3 Strange, George.</p> <p>4 It was brought to my attention and it was --</p> <p>5 you know, that this had been marked approved. I had</p> <p>6 been sharing some communications and having some ongoing</p> <p>7 discussions with staff about this matter, and there was</p> <p>8 a letter I wrote to Mike Elliot, also, about this.</p> <p>9 And the -- we needed -- I was asked to explain</p> <p>10 what this meant.</p> <p>11 Q. Okay. In reviewing her workflow, does that</p> <p>12 mean that you asked her to explain what her process was</p> <p>13 and what her analysis was as to why she marked approved?</p> <p>14 A. Yes.</p> <p>15 Q. And did you find her review and analysis</p> <p>16 deficient?</p> <p>17 MS. ZYLSTRA: Object to form. You can answer.</p> <p>18 A. No.</p> <p>19 Q. Should she had not approved the lighting</p> <p>20 application zoning review as she did on Exhibit 3?</p> <p>21 MS. ZYLSTRA: Object to form. You can answer.</p> <p>22 A. I don't believe her action was an approval of</p> <p>23 the lighting application. And I could explain why.</p> <p>24 Q. So when the word "zoning review approved"</p> <p>25 appears on Exhibit 3, does that not mean that your</p>

<p style="text-align: right;">Page 38</p> <p>1 department approved this application's -- the zone 2 review aspect of this application? 3 A. If I was to agree to that, I believe that she 4 made a mistake approving it. 5 What she did was a procedural step in 6 advancing the workflow, which is mandatory in the 7 workflow to establish -- and it shows up in the 8 ordinance under the site plan review to establish a date 9 by which the work would be completed. 10 If you look at her note, that is her sole 11 interest is obtaining the date by which this is being 12 installed by from the applicant. 13 And I don't believe -- in talking with her she 14 was not aware of the situation with the CI zoning in the 15 master plan that is part of this litigation. 16 Q. In a typical lighting application that comes 17 through where there is a lighting review and a zoning 18 review, someone from the building inspection department 19 approves, based on their review of the technical 20 specifications, someone from the zoning administration 21 department reviews zoning review, marks approved, that 22 permit has been granted -- that application has been 23 granted and the permit is issued; correct? 24 MS. ZYLSTRA: Object to form. You can answer. 25 A. Yes.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. So in your experience in dealing with an 2 outdoor lighting application, is it your testimony today 3 that the only thing that someone from your department at 4 the time, zoning administration in doing the zoning 5 review, the only thing they are concerned about is 6 establishing the date of completion? 7 A. Her position was that, when I talked to her, 8 was her approval was advancing the workflow because it's 9 mandatory. 10 Q. I'm not talking about Edgewood right now. I'm 11 talking about, generally speaking, when they're doing 12 lighting -- outdoor lighting reviews. 13 A. Okay. 14 Q. Right. They are doing permitted use site plan 15 review, which you said was the most appropriate project 16 type. There is a lighting review, a zoning review. 17 We talked about what Steve Rewey is looking 18 at. He's looking at technical specifications on 10.085. 19 In doing these reviews, typically, is it your 20 testimony that the only thing that Christina Thiele is 21 really looking at is the date of completion for the 22 project, and if she obtains that date of completion, she 23 can mark it approved and it moves on to workflow. Is 24 that your testimony? 25 MS. ZYLSTRA: Object to form. You can answer.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Are you aware of any other situations in your 2 tenure as a zoning administrator in which a lighting 3 application came in, lighting review is approved, zoning 4 review is approved as marked, confirmed on the form, and 5 the permit did not issue? 6 MS. ZYLSTRA: Object to form. You can answer. 7 A. I'm not aware of a scenario like that. 8 Q. What did Christina Thiele do or not do that 9 impacted the approval of this application? 10 MS. ZYLSTRA: Object to form. You can answer. 11 A. What did she do or not do? 12 Q. Well, let me ask you this: She didn't make a 13 mistake in approving this application, did she? 14 MS. ZYLSTRA: Object to form. Misstates prior 15 testimony. You can answer. 16 A. I believe the system forced her to take an 17 action to set the date of compliance on this. And this 18 is an extremely unique situation. 19 There is no other property in the city of 20 Madison that -- there would only potentially be the 21 University of Wisconsin-Madison and Edgewood that would 22 have been in this scenario. 23 And these staff are routinely approving and 24 advancing workflow on lighting things. It's a very easy 25 mistake to make.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. At the time, yes, that's what -- you know, her 2 -- when I spoke with her that's how she perceived this 3 application being processed. 4 Q. And, again, we're going to talk about Edgewood 5 application. 6 But for all cases other than Edgewood, what I 7 said was the proper scope of review by Christina, check 8 the date of completion, if you obtain a date of 9 completion then in all other cases I can switch the 10 status to approved, I can click my little drop down, and 11 my workflow is advanced. Is that accurate? 12 MS. ZYLSTRA: Object to form. You can answer. 13 A. You know, I don't think so, because there are 14 other -- there are other times lighting can come into 15 play, also, in a wide variety of things that come across 16 their desk. 17 They may -- you know, these blanket statements 18 are hard to -- you know, because things don't come in 19 uniformly. It's complicated. 20 Q. I understand. And I'll admit to you I'm 21 confused. 22 How does Christina Thiele know what she's 23 supposed to look at when they comes across her desk, 24 right? She says, oh, I need to do a zoning review for a 25 lighting application, or any kind of zoning review.</p>

<p style="text-align: right;">Page 42</p> <p>1 Christina Thiele's job, what is she supposed 2 to look at to advance this workflow, any workflow, on a 3 zoning review to the approved status? 4 A. So typically what they do is they will check 5 the property zoning. They will review the application 6 to discern what information is that's provided so they 7 can triage it to understand what's being requested. 8 They often check -- we have a few sources for 9 special conditions for property that we have identified 10 as unusual, unique, or there is some aspect you want to 11 be aware of that wouldn't be readily apparent. 12 And once they had gone through the triage and 13 the check, they would then be taking an action, 14 reviewing the application relative to their training. 15 Q. Okay. So was Edgewood denoted as a special 16 property? 17 A. Not at the time. 18 Q. Should Edgewood at the time of March 1, 2019 19 be denoted as a special property? 20 A. It would have definitely helped had it been 21 identified in that grouping. Those are -- those are ad 22 hoc. They really added as we stumble into them more 23 than anything else. 24 Q. Sure. I'm trying to make sure I understand 25 your testimony here as to what the typical -- the</p>	<p style="text-align: right;">Page 44</p> <p>1 Typically those special conditions say something like 2 "check with Matt" or "check with Tim Parks" or something 3 along those lines. 4 This was such a routine thing that happens in 5 the background that there was no catch for that. Yes. 6 Q. Sure. So what was it about Edgewood that was 7 unusual, or I think you used the phrase "unique," that 8 made -- strike that. 9 What was unusual or unique about Edgewood that 10 was important or material to the zoning review for this 11 lighting application? 12 A. So Edgewood is zoned Campus-Institutional and 13 it has an adopted master plan. 14 Q. How does that master plan impact the review 15 and approval of their February 2019 outdoor lighting 16 application? 17 A. Ideally, the master plan would be checked for 18 consistency and compliance with the request for 19 installation of lighting. 20 MR. INGRISANO: Can you read that back, 21 please. 22 (Record read) 23 Q. The light permit as otherwise denoted -- 24 sorry, the lighting application that was otherwise 25 denoted as approved for lighting review and zoning</p>
<p style="text-align: right;">Page 43</p> <p>1 analysis by someone like Christina would be doing in 2 zoning review. 3 So I heard you say that she's going to be 4 looking at the -- in doing her review, she's going to be 5 looking at the property zoning, and she's going to be 6 looking at kind of comparing that to what is being 7 requested. And then, in theory, there is a third 8 category of is this a special property. Is that a fair 9 summary? 10 A. We talked about in general that's what happens 11 when a zoning review is submitted. 12 Q. And I'm asking about the general process. 13 A. Yeah, that's not this. 14 Q. And, again, we'll talk about what this is here 15 in a minute. 16 A. Yes, the general process would be that, yes. 17 Q. Got it. So it's your belief that Edgewood, in 18 hindsight, should have been marked as a special property 19 when Ms. Thiele was doing her review on Exhibit 3? 20 MS. ZYLSTRA: Object. Form. You can answer. 21 A. I think any time there is an unusual or unique 22 circumstance on a property we try and identify it so 23 staff don't overlook something or make a mistake. 24 And something like that would have probably 25 paused this and had it be brought to my attention.</p>	<p style="text-align: right;">Page 45</p> <p>1 review on Exhibit 3, that permit was never issued; is 2 that correct? 3 A. That's -- I believe so. 4 Q. Was that application denied? 5 A. I am not aware of the communications that 6 occurred between -- there were ongoing communications 7 happening between Attorney Wautier representing Edgewood 8 and Attorney John Strange. 9 My understanding is that it was implied, and 10 it may have been incorporated into a later written 11 communication. 12 Q. That it was denied? 13 A. Yes. That wasn't being -- how about this; 14 that it wasn't being approved. 15 I don't know, like our office tends to not 16 deny things but tells how to get them approved, if that 17 makes sense. It's not the negative; it's the here's 18 what you need to do in order to obtain approval. 19 It may be in the form of a denial. It's very 20 rare and highly unusual for us to write a letter to 21 someone saying your project is being denied. We will 22 tell them their project is being -- it requires 23 revisions or something along those lines. 24 Q. Were you involved in the decision to not issue 25 the lighting application permit?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. I believe that was the decision of George.  2 Was I involved? I would have been part of the  3 discussion, yes.  4 Q. And George is -- well, what was the rationale,  5 as you understood it, for why the existence of the  6 master plan justified the non-issuance of the permit?  7 MS. ZYLSTRA: Counsel, to the extent this  8 involves any communications with John Strange, can we  9 have the same stipulation?  10 MR. INGRISANO: Yes.  11 MS. ZYLSTRA: Go ahead.  12 A. The existence of the master plan -- can you  13 read that question back again?  14 (Record read)  15 A. Okay. I would need to show you Section 10.085  16 to explain that.  17 MS. ZYLSTRA: It's Exhibit 1.  18 Q. I'm handing you what's been marked as Exhibit  19 1, sir.  20 A. So there are two aspects of this section.  21 First, I'll -- the first one I'll point out is  22 subsection (1) Purpose and Intent.  23 And towards -- in the last sentence of this,  24 in the Purpose and Intent, it says, "Installation of  25 outdoor lighting is not mandatory, but if installed, it</p>	<p style="text-align: right;">Page 48</p> <p>1 And, in turn, we offered direction to Nathan  2 Wautier on how to resolve matters to be able to -- for  3 them to be able to obtain lights.  4 Q. Sir, who did the analysis that 10.085 (1) and  5 (5)(b) justified the withholding of the permit?  6 MS. ZYLSTRA: Counsel, same stipulation?  7 MR. INGRISANO: Yes.  8 MS. ZYLSTRA: Thank you.  9 A. All I can say is that -- all I have knowledge  10 of is that these were the sections that George used to  11 withhold issuance of the permit.  12 I don't know, I guess is a better answer to  13 your question.  14 Q. Did you have any conversations with John  15 Strange and George Hank in which these citations, those  16 subsections of the statute were discussed?  17 A. I probably did to be -- you know, there is a  18 lot of information here and I have a big job, so I don't  19 recall. I'm sorry.  20 Q. Understood. Did George Hank come up with this  21 interpretation of 10.085 himself?  22 MS. ZYLSTRA: Objection. Form, foundation.  23 You can answer.  24 A. I don't know.  25 Q. And is it your testimony that the citation to</p>
<p style="text-align: right;">Page 47</p> <p>1 shall be in conformance with the provisions of the  2 ordinance, the building code, and all other codes and  3 regulations as applicable under appropriate permit and  4 inspection."  5 And my recollection of the discussion was the  6 existence of the master plan and the words contained in  7 it, the allowances within it. Which, that's an  8 extensive document. There is various points where it is  9 this topic or, you know, is related to -- would be  10 inconsistent with that last sentence. Because it would  11 result in a matter of noncompliance with an adopted  12 regulation, a map amendment, which is the master plan,  13 zoning map amendment. That part.  14 Moving on to -- let's see here. I'm looking  15 -- there is another section in here, and I'm sort of  16 struggling to find it right now, but -- here it is.  17 It's under "Approval Procedures," sub 5, sub  18 b: "Upon review of the material described above, the  19 building inspection division may authorize the  20 installation of outdoor lighting fixtures."  21 And I'm pointing out the word "may,"  22 emphasizing the word "may."  23 So my recollection was those two sections  24 provided George -- were in consideration of George's  25 decision to withhold the permit.</p>	<p style="text-align: right;">Page 49</p> <p>1 10.085 and 10 point -- I'm sorry, 10.085 (1) and (5)(b),  2 that that was conveyed to Nathan Wautier in a written  3 communication?  4 A. There is a written communication. I probably  5 shared a copy of that. I don't know about all the  6 communications between Nathan and John.  7 MR. INGRISANO: Let's take a break. It's past  8 10:00.  9 MS. ZYLSTRA: All right. We'll take a break.  10 (Recess)  11 Q. MR. INGRISANO: Back on the record.  12 Mr. Tucker, what role, if any, did you have in  13 the development and formulation of the interpretation  14 under 10.085 that you're saying Mr. Hank utilized to  15 withhold or deny the Edgewood permit?  16 MS. ZYLSTRA: I'm going to object to form.  17 You can answer.  18 A. By general practice, we operate in the agency  19 as sort of a team for bouncing ideas off or talking  20 things through, because what we do is complicated and we  21 take advantage of each other's sounding boards and such.  22 My recollection is, is that I was just made  23 aware of George's decision in that regard. I don't  24 recall, but I probably was part of the conversation. It  25 would be unusual for me not to be just because we worked</p>



<p style="text-align: right;">Page 50</p> <p>1 together.</p> <p>2 Q. Do you know who suggested reliance on 10.085,</p> <p>3 sub 1, in that last sentence you pointed me to?</p> <p>4 A. I don't.</p> <p>5 Q. Do you know who suggested reliance upon</p> <p>6 Section 10.085, sub 5b, that you noted earlier?</p> <p>7 A. No.</p> <p>8 Q. Sir, we discussed Mr. Rewey's review and the</p> <p>9 scope of his review for the lighting as a building</p> <p>10 inspection department employee in Exhibit 3; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And we established that he was looking for</p> <p>13 technical compliance with 10.085; is that right?</p> <p>14 A. Yes, I believe so.</p> <p>15 Q. And he labeled that as "approved" as of</p> <p>16 February 27, 2019, right?</p> <p>17 MS. ZYLSTRA: Object to form. You can answer.</p> <p>18 A. That's what the report shows, yes.</p> <p>19 Q. And is it your testimony today that after</p> <p>20 Mr. Rewey had approved the lighting review as being</p> <p>21 compliant with 10.085 as approved, that Mr. Hank</p> <p>22 subsequently decided to exercise his discretion under</p> <p>23 (5)(b) of 10.085 to deny and withhold the permit?</p> <p>24 MS. ZYLSTRA: I'll object to form, foundation.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 52</p> <p>1 take.</p> <p>2 Q. Sure. I think my question was a little bit</p> <p>3 different.</p> <p>4 What did Mr. Hank express to you was his</p> <p>5 rationale for why he was going to agree to use his</p> <p>6 discretion and withhold that permit?</p> <p>7 MS. ZYLSTRA: Object to form. You can answer.</p> <p>8 Q. If he didn't say anything or you don't</p> <p>9 remember him saying anything, just let me know.</p> <p>10 A. I recall him and I talking about this, that</p> <p>11 they need to have their master plan amendment approved</p> <p>12 for the lighting to be allowed.</p> <p>13 Q. So you believed that a master plan amendment</p> <p>14 was required for approval of the lights at that time; is</p> <p>15 that correct?</p> <p>16 MS. ZYLSTRA: Object to form. You can answer.</p> <p>17 A. At that point in time, we're talking about</p> <p>18 after March, we've already been faced with this issue,</p> <p>19 our default was working with their amendment that they</p> <p>20 had already submitted to proceed towards approval.</p> <p>21 So we were in a good place thinking they were</p> <p>22 taking the right path. So we were having to really kind</p> <p>23 of step back and revisit the details of the master</p> <p>24 plan -- it's a complicated document -- to review and</p> <p>25 learn specifically what it said about something that,</p>
<p style="text-align: right;">Page 51</p> <p>1 A. Yeah, I believe that's correct.</p> <p>2 Q. What did Mr. Hank express as being his</p> <p>3 rationale or justification for why that was a warranted</p> <p>4 exercise of his discretion?</p> <p>5 MS. ZYLSTRA: Same objection. You can answer.</p> <p>6 A. We talked about -- if I can recall exactly</p> <p>7 how. Yeah, I don't -- can you ask me the question</p> <p>8 again? I'm sorry. Can you read that back?</p> <p>9 (Record read)</p> <p>10 A. So Mr. Hank and myself were in regular</p> <p>11 conversations about this topic and issue. And Attorney</p> <p>12 John Strange was --</p> <p>13 MS. ZYLSTRA: Counsel, same stipulation?</p> <p>14 MR. INGRISANO: Yes.</p> <p>15 A. Yeah, it was more so. Absolutely. Like was</p> <p>16 involved in the conversation. And we were -- we were --</p> <p>17 frankly, we were trying -- we were trying to understand</p> <p>18 why -- um, that's not the right --</p> <p>19 George and I were aware that a master plan</p> <p>20 amendment was required. We were -- we were aware that a</p> <p>21 master plan amendment request was pending.</p> <p>22 And that would have solved the issue had that</p> <p>23 master plan amendment been approved, there wouldn't have</p> <p>24 been a potential conflict. And that was the path to the</p> <p>25 permit that our discussions talked about having Edgewood</p>	<p style="text-align: right;">Page 53</p> <p>1 frankly, really caught us off guard as an alternative.</p> <p>2 It was a right turn for us. Surprising would be not out</p> <p>3 of bounds.</p> <p>4 MR. INGRISANO: Can you read my question back,</p> <p>5 please.</p> <p>6 (Record read)</p> <p>7 Q. In February and March of 2021, did you believe</p> <p>8 a master plan amendment was required in order for</p> <p>9 Edgewood's light to be approved?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 MR. INGRISANO: Can I have a basis for the</p> <p>12 form objection?</p> <p>13 MS. ZYLSTRA: You're putting together two</p> <p>14 months, and as I understood his testimony, as I</p> <p>15 understand the documents that the time period is too</p> <p>16 broad because it changed over time.</p> <p>17 MR. INGRISANO: Then he can explain that.</p> <p>18 That's not a proper form objection.</p> <p>19 MS. ZYLSTRA: Well, I think it's vague as to</p> <p>20 the specific --</p> <p>21 Q. All right. Let me ask you this question then:</p> <p>22 Did your position on whether master plan</p> <p>23 approval, whether an -- is it your position that a</p> <p>24 master plan amendment was required to approve lights,</p> <p>25 did that position change at any time?</p>



<p style="text-align: right;">Page 54</p> <p>1 A. It did, yes. And I wrote a letter to Mike 2 Elliot on the 27th of February. 3 And, at that time, once again, we were 4 reacting -- reacting to what was a surprise to us, a 5 lighting application and a communication of intent to 6 use the property. And we wanted to warn, I guess if you 7 will, Mr. Elliot, the focus, which was install lights so 8 they can play games. 9 And we looked -- so after I had written that 10 letter, we took a very close and detailed look at the 11 master plan -- and by "we" I would indicate that would 12 be myself and George Hank and John Strange -- to see, I 13 would call it a fine toothed comb method, to determine 14 how a request for lighting would be identified under the 15 approved master plan. 16 Now, this master plan is kind of a reference 17 document. It's not a book you read. It's a document 18 you use that you might jump around on. 19 So we had jumped around on it before, but we 20 went back and read it in its entirety to understand 21 specifically what was being requested of us and how that 22 related to the approved master plan. 23 Q. What input did you provide after reviewing the 24 entire document as to -- the master plan as to what 25 would need to be amended in order to grant the lights?</p>	<p style="text-align: right;">Page 56</p> <p>1 MS. ZYLSTRA: Same stipulation? 2 MR. INGRISANO: Yes. 3 A. I don't believe. 4 Q. Sir, I'm going to hand you what's been marked 5 as Exhibit 7. Please find all references in that 6 document to what you believe would require amendment of 7 that master plan before lights could be issued. 8 So you identified open spaces, improvements -- 9 I'm sorry, improvements and lighting provisions in that 10 master plan. 11 I need you to identify on the record the pages 12 that you're relying upon. 13 MS. ZYLSTRA: To be clear, Counsel, lights on 14 the athletic field as shown in Exhibit 3 or any lights? 15 MR. INGRISANO: Lights on the athletic 16 field -- 17 Q. Sir, what I'm asking you to do is identify the 18 provisions that you pointed to and that you relied upon 19 that you had expressed as justifying the withholding of 20 that permit on February of 2019. 21 A. You're asking for the three things that I just 22 identified, right? 23 Q. If you were incomplete and there are more 24 things that you relied upon and that you communicated to 25 Mr. Hank and Mr. Strange, identify those, too.</p>
<p style="text-align: right;">Page 55</p> <p>1 MS. ZYLSTRA: Counsel, same stipulation or did 2 you want it to be continued? 3 MR. INGRISANO: Based on his review of the 4 document. 5 MS. ZYLSTRA: Okay. 6 A. So when I went through the documents, I looked 7 through the Open Spaces Plan. I looked through the -- 8 there is a section, and I'm paraphrasing, but it talks 9 about improvements, capital improvements, or those types 10 of things. And then there is a section that also 11 discusses lighting. 12 And those were the three that I found that 13 related to lighting. And so I sort of like tabbed 14 those, identified those, and understood how they related 15 to how they limited or restricted or otherwise governed 16 the property. Identifying that those were things that I 17 believed would have needed amendment to accommodate some 18 things as individual as the lighting of February 22nd to 19 the broader use as reflected in the blank Elliot letter 20 to the families that was attached to the letter I wrote 21 on the 27th. 22 Q. Did you have any written memoranda or email 23 communications with Mr. Hank and/or Mr. Strange in which 24 you identified the provisions that you just answered 25 about?</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Okay. 2 Q. You do recognize that, sir, Exhibit 7 as a 3 copy of the master plan? 4 A. Yeah, I'm assuming that's what it is. This is 5 going to take me awhile because it's a big document. 6 Q. Mr. Tucker, that's why we're here. 7 A. All right. I'm good with that. 8 Q. Just for the record, the top of the left of 9 those pages are paginated for the exhibit for the 10 Western District timestamp, so we can rely on that. 11 MS. ZYLSTRA: Oh, yeah, that's right. 12 MR. INGRISANO: Go off the record. 13 (Discussion off the record) 14 (Recess) 15 (Record read) 16 BY MR. INGRISANO: 17 Q. Go back on the record, please. 18 All right. Mr. Tucker, you have had an 19 opportunity to review Exhibit 7; is that right? 20 A. Yes. 21 Q. And can you identify for me the provisions of 22 that document that are responsive to my last question? 23 A. Sure. The -- there is a broader campus plan, 24 page 18 in the document. 25 Q. You're referring to page 18 where?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. Exhibit 7, page 18, on the bottom.</p> <p>2 Q. And just because there is some conflicting</p> <p>3 pagination, so let me just make sure.</p> <p>4 Campus plans, also on the top right, that's</p> <p>5 page 36 of 228. Do you see that?</p> <p>6 A. Yeah.</p> <p>7 Q. Why don't we try to agree to reference the</p> <p>8 pagination on the top right.</p> <p>9 A. Okay. Sounds good.</p> <p>10 Q. So you're on page 36 of 228?</p> <p>11 A. Yeah.</p> <p>12 Q. And what language there are you relying upon?</p> <p>13 A. What I would say is it's not as much language,</p> <p>14 it's the utter lack of language in the campus plan.</p> <p>15 And the fact that there is -- that this campus</p> <p>16 plan identifies -- does not identify the type of</p> <p>17 improvement, which, you know, at the time we're having</p> <p>18 this discussion it's lights, it's a press box, it's</p> <p>19 expanded seating, locker rooms, concessions.</p> <p>20 The utter lack of information in regard to the</p> <p>21 campus plan and potential changes in the building's</p> <p>22 addition, it's a building plan but it just lacks</p> <p>23 information in that regard. I will note that parking</p> <p>24 lots are identified on this plan, which are not</p> <p>25 necessarily buildings. It leads us to believe that the</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. ZYLSTRA: Object to form. You can answer.</p> <p>2 A. It is implied.</p> <p>3 Q. Is it in the four corners of the document in</p> <p>4 writing?</p> <p>5 MS. ZYLSTRA: Object to form. You can answer.</p> <p>6 A. I don't believe so, no.</p> <p>7 Q. Is a landowner required to identify the</p> <p>8 activities to be lit as a condition for approval of an</p> <p>9 outdoor lighting application?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 A. We may request that.</p> <p>12 Q. Did you?</p> <p>13 A. I'm sorry, we may request that information.</p> <p>14 Q. That would be part of Steve Rewey's typical --</p> <p>15 let me ask you this:</p> <p>16 How often have you requested under an</p> <p>17 application for lighting under 10.085, how many times</p> <p>18 have you requested in your career that follow-up</p> <p>19 information from the landowner to identify the</p> <p>20 activities and events that are going to be lit?</p> <p>21 A. As I stated earlier, most of the -- most of</p> <p>22 the lighting applications that we receive are for</p> <p>23 lighting parking lots. So on their face, it's a parking</p> <p>24 lot that's striped and has spots for cars, so on its</p> <p>25 face it's obvious what the intent is.</p>
<p style="text-align: right;">Page 59</p> <p>1 plan does not provide a justification for us approving</p> <p>2 that, lights.</p> <p>3 Q. And, again, your review when you were going</p> <p>4 through this document with -- I think the phrase you</p> <p>5 used was a "fine toothed comb," you were analyzing that</p> <p>6 against simply the application for lights, correct, not</p> <p>7 for prospective or anticipated applications for stadium</p> <p>8 sound, bleachers, concessions, things like that;</p> <p>9 correct?</p> <p>10 A. No, because this was a moving target. You</p> <p>11 know, we were constantly being asked to look at</p> <p>12 hypotheticals and review broadly what the master plan</p> <p>13 allowed.</p> <p>14 Q. The actual application before you is just for</p> <p>15 lights; correct?</p> <p>16 A. It was never really before us, because it was</p> <p>17 lights that involved allowing games to be played.</p> <p>18 Q. Is that in the application itself, lights that</p> <p>19 allowed games to be played?</p> <p>20 A. It is not in the Exhibit 3, but it is</p> <p>21 discussed by the Edgewood families in the letter that</p> <p>22 Mike Elliot sent out that I had got a copy of it.</p> <p>23 Q. In an outdoor lighting application are the</p> <p>24 potential uses and events to be lit by those lights, is</p> <p>25 that part of what's in the application?</p>	<p style="text-align: right;">Page 61</p> <p>1 But I can't say definitively that we haven't</p> <p>2 had a lighting application that was, like, for example,</p> <p>3 intended to illuminate an outdoor seating area that</p> <p>4 require conditional use. You know, people are saying,</p> <p>5 huh, this lighting is scary outside the building, do you</p> <p>6 guys know about this over in zoning. Because it would</p> <p>7 have required a conditional use.</p> <p>8 That has happened in the past. But most of</p> <p>9 the applications are for parking lots. So like, 90 --</p> <p>10 the upper 90s percentile are going to follow in that</p> <p>11 category.</p> <p>12 We're more trying to -- we're trying to</p> <p>13 predict and not avoid problems, if you think of it from</p> <p>14 that standpoint.</p> <p>15 Q. How many times have you actually required,</p> <p>16 that you know of, a landowner to come back with</p> <p>17 additional information to identify the activities and</p> <p>18 events that are going to be lit?</p> <p>19 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>20 You can answer.</p> <p>21 A. Um, and by application do you mean a -- do you</p> <p>22 mean like Exhibit 3 where they actually submit a</p> <p>23 lighting plan or --</p> <p>24 Q. An application that would otherwise be</p> <p>25 governed by the technical specifications of 10.085.</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Okay.</p> <p>2 MS. ZYLSTRA: Object to form, foundation. You</p> <p>3 can answer.</p> <p>4 A. Could I ask like a follow-up question? I'm</p> <p>5 just trying to understand this.</p> <p>6 Q. I'm asking what your practice -- I'm asking</p> <p>7 how many times that you can identify in your career.</p> <p>8 Because you mentioned you would go back and ask for that</p> <p>9 information. I'm asking how many times you have done</p> <p>10 that.</p> <p>11 MS. ZYLSTRA: Form, foundation. You can</p> <p>12 answer.</p> <p>13 A. It's pretty rare. I recall -- I recall one</p> <p>14 athletic field one. I do recall one in the mid-2000s.</p> <p>15 I'm struggling on the details on it though.</p> <p>16 It got brought to my attention because it was</p> <p>17 for an athletic field, and it came from the building</p> <p>18 inspection side, so it tells me that it came in as a</p> <p>19 permit application like Exhibit 3.</p> <p>20 But more often than not, people ask before</p> <p>21 they apply. But, you know, I would say it's rarely. I</p> <p>22 can't give you a definitive number, a very small number,</p> <p>23 a handful.</p> <p>24 Q. Can you identify that field from the 2000s?</p> <p>25 A. Yeah, the Zion -- the Zion Church on West</p>	<p style="text-align: right;">Page 64</p> <p>1 figure out how to approve your field. And lights are</p> <p>2 going to be an aspect of it.</p> <p>3 Q. How was that property zoned at the time?</p> <p>4 A. Oh dear.</p> <p>5 Q. If you recall.</p> <p>6 A. I can't tell you. It had a car wash on it</p> <p>7 that was a disaster and got torn down. I want to say</p> <p>8 that it had a commercial zoning district on it. CI</p> <p>9 District didn't exist.</p> <p>10 Q. And it was at that time, there was no soccer</p> <p>11 field there at the time, it was a proposal to develop a</p> <p>12 soccer field with lighting; is that right?</p> <p>13 A. Yes.</p> <p>14 MR. INGRISANO: Go ahead and have this marked</p> <p>15 as our next exhibit.</p> <p>16 (Exhibit 37 marked)</p> <p>17 THE WITNESS: Did I say Zion Lutheran Church?</p> <p>18 Because I don't know if they are Lutherans. It's just</p> <p>19 Zion Church. Does it matter --</p> <p>20 Q. We won't hold you to the denomination at this</p> <p>21 point.</p> <p>22 A. Okay. Thank you.</p> <p>23 Q. We're going to come back to Exhibit 7 here in</p> <p>24 a minute, Mr. Tucker.</p> <p>25 But just while we're here, do you recognize</p>
<p style="text-align: right;">Page 63</p> <p>1 Badger Road. A former car wash. It's next to Burger</p> <p>2 King off of Park Street. They had approached us about</p> <p>3 constructing a soccer field and had submitted a lighting</p> <p>4 plan for lights on that soccer field. It never got</p> <p>5 built.</p> <p>6 Q. Okay. Did it not get built -- well, let me</p> <p>7 ask this:</p> <p>8 Did the city issue permits for lights for that</p> <p>9 field?</p> <p>10 A. I don't recall if permits were issued or not.</p> <p>11 The field was never built.</p> <p>12 Q. Do you know why the field was never built?</p> <p>13 A. No.</p> <p>14 Q. Do you recall what you -- what your department</p> <p>15 asked to follow up from the property owner in terms of</p> <p>16 activities or events that were to be lighted or lit?</p> <p>17 A. Yes, we asked that. We were attempting to</p> <p>18 understand what the intent of the church was to create</p> <p>19 this field.</p> <p>20 We were also curious about the intended use,</p> <p>21 the big issues like bathrooms and parking. This was</p> <p>22 under our old zoning code. I believe it was a</p> <p>23 conditional use. And so we were trying to -- we were</p> <p>24 trying to respond to the lighting ask with a return on</p> <p>25 land use, like what are you asking for, we've got to</p>	<p style="text-align: right;">Page 65</p> <p>1 Exhibit 37 as a copy of the lighting application that</p> <p>2 was submitted by Madison Edgewood in February of 2019?</p> <p>3 A. I'm just trying to find a date on this. Yeah,</p> <p>4 I'm sorry, I'm trying to find a date on this just to</p> <p>5 qualify and I'm struggling to find a date.</p> <p>6 This may be a piece of something that was</p> <p>7 attached to something that had a date on it, but I don't</p> <p>8 -- unless somebody can point me to the date, I won't be</p> <p>9 able to tell you when this one came in.</p> <p>10 Q. Understood. All right.</p> <p>11 MR. INGRISANO: Let's have this marked.</p> <p>12 (Exhibit 38 marked)</p> <p>13 Q. MR. INGRISANO: Do you recognize -- let me ask</p> <p>14 you this:</p> <p>15 Does this document give you a little bit more</p> <p>16 clarity on the application filed by Edgewood?</p> <p>17 If you look at page 2 of this Exhibit 38, and</p> <p>18 I'm seeing what looks like a stamp from the zoning</p> <p>19 department. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What does that stamp tell you?</p> <p>22 A. The page 2 stamp is our conventional site plan</p> <p>23 approval stamp that we put on approved site plans. It's</p> <p>24 a wet stamp, which is basically a stamp of</p> <p>25 acknowledgement that we slap on plans when we are</p>

<p style="text-align: right;">Page 66</p> <p>1 closing them out and archiving them.</p> <p>2 Q. And that stamp, do you recognize the signature</p> <p>3 on that stamp?</p> <p>4 A. I do.</p> <p>5 Q. Whose signature is that?</p> <p>6 A. That's Christina Thiele's signature.</p> <p>7 Q. There is a field on that stamp with a</p> <p>8 handwritten entry for date submitted. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have a sense from your experience as to</p> <p>11 what that "date submitted" field represents?</p> <p>12 A. That would be the date that our office</p> <p>13 received the application.</p> <p>14 Q. All right. And you, sir, don't have any</p> <p>15 reason to doubt or question whether Edgewood actually</p> <p>16 submitted its light plan or its light application.</p> <p>17 They did submit an application on February</p> <p>18 22nd, did they not?</p> <p>19 A. I believe I had seen they did submit an</p> <p>20 application February 22nd, yes.</p> <p>21 Q. And from a technical specification standpoint,</p> <p>22 you agree with me that that application met the</p> <p>23 technical specifications required under 10.085; correct?</p> <p>24 MS. ZYLSTRA: Objection. Form. You can</p> <p>25 answer.</p>	<p style="text-align: right;">Page 68</p> <p>1 including buildings and parking areas.</p> <p>2 Q. So the red on that map on page 39 of 228</p> <p>3 indicates existing buildings?</p> <p>4 A. Yes. Maroon-red is a color that indicates</p> <p>5 existing buildings.</p> <p>6 Q. What, if anything, on this map identifies for</p> <p>7 you the permitted uses of the existing buildings?</p> <p>8 MS. ZYLSTRA: Object to form. You can answer.</p> <p>9 Q. If anything?</p> <p>10 A. The map references -- it references -- it has</p> <p>11 numbers which speak to -- it starts back on page 36.</p> <p>12 And in those references of those buildings and</p> <p>13 those sites there are descriptions of use, there is also</p> <p>14 descriptions of -- like, there is some parking areas</p> <p>15 that have some words in the pages between 36 and 39.</p> <p>16 Q. Sure.</p> <p>17 A. That's it.</p> <p>18 Q. Got it. So enumeration uses in the master</p> <p>19 plan, like what you've pointed to here under building</p> <p>20 uses, that enumeration of uses, in your view, functions</p> <p>21 as a limitation of the uses, that they can only be used</p> <p>22 for the uses identified in the document; is that</p> <p>23 correct?</p> <p>24 MS. ZYLSTRA: Object to form. You can answer.</p> <p>25 A. I think this is just one piece. There is</p>
<p style="text-align: right;">Page 67</p> <p>1 A. For some reason I thought that they had</p> <p>2 included punt lighting. That wasn't -- it might have</p> <p>3 been missed by Mr. Rewey, so something about discussions</p> <p>4 tells me that particularly I think Nathan Wautier might</p> <p>5 have said we removed punt lighting, so it tells me that</p> <p>6 the punt lighting was matched and it might have just</p> <p>7 been missed.</p> <p>8 So with that caveat, it seems like Mr. Rewey</p> <p>9 missed the punt lighting, but otherwise it would have</p> <p>10 been technically compliant with the standards of 10.085.</p> <p>11 Q. Okay. You can put those two exhibits aside</p> <p>12 for the moment. We have digressed.</p> <p>13 We were talking about Exhibit 7. We were</p> <p>14 going through your analysis of the master plan. You</p> <p>15 identified on page 36 of 228 the campus plan, and as I</p> <p>16 understood it, the lack of language regarding lighting</p> <p>17 as being material or important to your analysis of that</p> <p>18 issue; is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Is there anything else you want to add</p> <p>21 about this page, page 36 of 228, beyond what you've</p> <p>22 already said?</p> <p>23 A. Just page 36 also relates -- well, it starts</p> <p>24 on page 36, but it runs through to page 39 which is a</p> <p>25 map that correlate with the identified improvements,</p>	<p style="text-align: right;">Page 69</p> <p>1 other pieces of the master plan that talk about use</p> <p>2 coming up later on in the document.</p> <p>3 But I think they are generally covering the</p> <p>4 buildings, generally touching on the use, but not a very</p> <p>5 fine grain detail in pages 36 to the map on 39.</p> <p>6 Q. So, again, for 36 through 39, it was the</p> <p>7 absence of language discussing lighting that you found</p> <p>8 to be important?</p> <p>9 A. This is one place that we would expect to see</p> <p>10 potentially an improvement at the scale of adding</p> <p>11 lighting, yes.</p> <p>12 Q. Okay. What was the next section or page of</p> <p>13 the master plan that you relied upon?</p> <p>14 A. So further in this section, which I believe</p> <p>15 it's called "Proposed Conditions," it's a big header in</p> <p>16 the master plan on page 55.</p> <p>17 Q. 55 of 228?</p> <p>18 A. Yeah, I think this is where we found it -- or</p> <p>19 I found it.</p> <p>20 There is a subsection called "Lighting," and</p> <p>21 it talks about outdoor lights, security box lights and</p> <p>22 other lights be carefully designed in conjunction with</p> <p>23 this area. And lighting shall comply with the</p> <p>24 ordinances.</p> <p>25 This is under -- I'm not exactly sure what</p>

<p style="text-align: right;">Page 70</p> <p>1 this one is under by the way they have this heading set 2 up. But it's another point where they are kind of 3 reiterating some discussion about lighting and how 4 lighting is installed. 5 I think we would expect to see a 6 non-debatable, very clear provision of allowance for 7 lighting for us to feel comfortable that the lighting 8 was allowed per the master plan. 9 Q. So, if I may, if I understand it, you're 10 saying on page 55 of 228, on the second column, the 11 section is labeled "Lighting," you would -- in order to 12 allow lighting or to conclude that lighting would be 13 permissible under the master plan, you would want to see 14 more detail about the lighting that would cover or refer 15 to the outdoor field lighting; is that correct? 16 A. Yes. Part of the process of adopting a master 17 plan is to include the detail on these types of aspects 18 of the site which could have impacts on the -- on the 19 adjacent properties. 20 And we would expect to see more very -- we 21 would expect to see very clear words that included -- or 22 maps or other types of graphics than relying on the 23 limited words that we see here. 24 This master plan is a restrictive document 25 written by Edgewood, negotiated with the neighborhood,</p>	<p style="text-align: right;">Page 72</p> <p>1 me to the provisions in the ordinance that you believe 2 require the level of specificity that you're saying here 3 that you expect. And I'm going to hand you what's been 4 marked as Exhibit 13 for that purpose. 5 A. And I'll note that this is the 6 Campus-Institutional District as it reads today in the 7 ordinance, not at the time that -- but essentially there 8 is a minor change -- maybe not a minor change, but there 9 is a change. 10 Q. I think we can debate about that, Mr. Tucker, 11 about how minor that change actually is. 12 A. Minor within words. 13 Q. Let me ask you this important question then: 14 Did any of the provisions change that you 15 would rely upon to talk about, kind of the materiality 16 of the specificity of the lights, did those provisions 17 change with the October 2019 amendment? 18 A. I'm not understanding that question. 19 Q. What you would rely on in looking at that 20 ordinance, and say, hey, here's what we would have 21 expected from a specificity standpoint, did those 22 change? 23 A. No. 24 Q. So if you can go ahead and find those for me. 25 A. Okay. So, "Contents of Master Plan," section,</p>
<p style="text-align: right;">Page 71</p> <p>1 and we wanted this to be clear and this is another place 2 where it was not clear. 3 Q. Let me stop you there for a second. What 4 provisions -- let me ask you this: 5 We've talked a little bit about what your 6 expectations are and what you would have expected to see 7 in this document. 8 Prior to this one, how many 9 Campus-Institutional zone district master plans had you 10 reviewed and approved? 11 A. I don't review and approve Campus Master 12 Plans, but this was the first Campus-Institutional 13 master plan that was created under the city's zoning 14 district for CI. 15 Q. Sure. And so who communicated what the city's 16 expectations were as to what the content of that 17 document would be to Edgewood? 18 MS. ZYLSTRA: Objection. Form, foundation. 19 You can answer. 20 Q. If you know. 21 A. Well, the basic framework is in the ordinance. 22 If you read the ordinance you will see it between the -- 23 you know, well, if somebody has the ordinance I could 24 read it to you. 25 Q. Sure. Actually, I'm going to ask you to point</p>	<p style="text-align: right;">Page 73</p> <p>1 subsection 5, talks about "The master plan shall include 2 the following elements and information." 3 And within that, there is a subsection called 4 "Facilities Plan." And in that, it talks about under 5 the first part of the Facilities Plan, sub C, "Includes 6 a description of existing conditions on the campus and 7 the proposed conditions under the master plan, 8 including." 9 And it has a list, "Existing Conditions and 10 Proposed Conditions." And one of the -- yeah, there is 11 two components. One is "Future needs/capital 12 improvements," sub A, under "Proposed Conditions." 13 Q. I'm sorry, sir, can you again reorient me 14 where you're looking? 15 A. Sure. I'm under sub 5, "Contents of Master 16 Plan," sub C, "Facilities Plan." 17 Q. Got it. 18 A. And then I'm in "Existing Conditions and 19 Proposed Conditions." 20 Q. Okay. 21 A. Existing conditions, that's probably pretty 22 obvious. 23 Proposed conditions, Future needs/capital 24 improvements. 25 My experience of administering this master</p>



<p style="text-align: right;">Page 74</p> <p>1 plan, when Edgewood wanted to expand their parking lot, 2 the master plan showed they could do it and they were 3 able to expand their parking lot. 4 When they wanted to build a number of building 5 additions that they executed over the years that they 6 were under the master plan, we reviewed their requests 7 against the master plan and found generally those 8 projects they were proposing were generally consistent 9 with the master plan, generally. And granted approvals 10 likewise. 11 And the installation of poles at the light or 12 lights at the athletic field is not shown in the future 13 needs or capital improvements aspect of this document. 14 I think we would also want to see under 15 proposed conditions open space areas, other open space 16 uses. This matter is a matter of -- has been a 17 longstanding matter of focus between Edgewood and the 18 neighborhood, and we would expect clear words in the 19 ordinance that related to any modification of the use, 20 construction, additional structures, that would be 21 capital type improvements like the lighting poles. 22 And the document doesn't include that type of 23 information. 24 Q. Okay. Next. 25 A. I'm going to need a little more time. There's</p>	<p style="text-align: right;">Page 76</p> <p>1 are talking about -- this is about Site One, which is 2 kind of in context. I'm sort of like getting at all the 3 points where lighting is kind of -- it sort of sets the 4 tone for approval. 5 Q. 48, sir? 6 A. Yeah, there is -- 7 Q. Top left? 8 A. 48, the bottom on the left side. 9 Q. So we're going back? 10 A. Yeah, yeah. And then I'm -- what I'm trying 11 to do is identify all the places where lighting is, 12 because lighting is so clearly identified in multiple 13 places that it's a sensitive matter, that that's another 14 point where it kind of comes up which leads us to 15 believe that additional lighting would have been 16 prominently featured in the master plan for us to be 17 able to issue a permit. 18 Q. I'm looking at page 48 of 228. What about 19 that page should I be looking at? 20 A. Towards the bottom there is a bullet that 21 says, "Ensure that parking ramp interior and lighting is 22 not visible from Woodrow Street at any time." 23 So it's something that speaks to lighting. 24 Maybe it's not relevant to the question, but it's part 25 of the master plan that speaks to the lighting.</p>
<p style="text-align: right;">Page 75</p> <p>1 a -- I recall a distinct provision that I just want to 2 find that I didn't find when I was looking previously 3 when we paused related to lights. 4 Q. Okay. 5 A. I typically search the PDF to find the words. 6 I'm a cheater that way, particularly when I have read it 7 and then I'm looking back into it, so it's going to take 8 me a little bit of time. 9 MR. INGRISANO: Okay. We can go back off. 10 (Recess) 11 BY MR. INGRISANO: 12 Q. Mr. Tucker, we took another break. You had 13 some additional provisions you wanted to look for in the 14 document. 15 Again, and correct me if I'm wrong, we're 16 rounding out on identifying the content of the master 17 plan that you believe justified, at the time, 18 withholding the light permit. Is that a fair summary? 19 A. Yes. 20 Q. Okay. Last, we were on page 55 of 228. We 21 talked about the lighting section on the right-hand 22 corner. 23 What next would you like to point me to, 24 please? 25 A. I think we had one over here on 48 when they</p>	<p style="text-align: right;">Page 77</p> <p>1 Next is on page 58. Did we talk about that? 2 Q. Let's go back to 48 for a second. 3 A. Oh, sure. 4 Q. So the reference to -- what does that 5 reference to lighting relate to? Is that lighting for 6 all of Site One, specifically? 7 A. Part of Site One. It appears to be part of 8 Site One, which is adjacent to the athletic field, yeah. 9 And it's just speaking to lighting. 10 And so I provide that example of like when 11 lighting is proposed on the development of Site One, 12 it's going to be permissible. You know, I would be 13 indicating to Edgewood or neighbors or the alder or 14 whoever, that the lighting -- the building in 15 development of Site One is acceptable. 16 Q. Sure. Really quick, though. You weren't 17 involved in the negotiation or approval process for this 18 document back in 2014; is that right? 19 MS. ZYLSTRA: Object to form. You can answer. 20 A. I was involved in the approval process of this 21 document. 22 Q. And did you, at any time, ever convey to 23 Edgewood that -- let's back up for a second. 24 Prior to Edgewood adopting the master plan, it 25 could use its athletic field for any permissible purpose</p>



<p style="text-align: right;">Page 78</p> <p>1 under the permissible permitted uses section of the  2 Campus-Institutional zoning code; is that right?  3 A. That's correct.  4 Q. And it could have added lights to that field  5 without any sort of analysis or review beyond Section  6 10.085; is that right?  7 MS. ZYLSTRA: Object to form, foundation. You  8 can answer.  9 A. I believe so, yes.  10 Q. Because, for example, when Memorial got its  11 lighting reviewed and approved in 2018, its application  12 as a Campus-Institutional zone institution was only  13 reviewed under 10.085; is that correct? If you know.  14 A. Well, the Memorial situation was also  15 different because it was an existing facility and there  16 was existing lighting being replaced. But the lighting  17 was reviewed and approved under Section 10.085.  18 Q. So do you know if Edgewood was ever notified  19 by you or anyone else during the process that this  20 master plan was being extensively and laboriously worked  21 on, that any activity not described or any proposed use  22 or condition not described in sufficient detail would be  23 prohibited?  24 A. Can you ask that question again?  25 Q. Sure. Do you know if Edgewood was ever</p>	<p style="text-align: right;">Page 80</p> <p>1 been working for the city about expectations and  2 understandings, very clearly noting that what goes in  3 the master plan will govern, will provide the  4 boundaries, the min-max, maybe you would say, for what  5 is to be allowed.  6 I'll point out that we are allowed to also  7 interpret and manage that master plan, you know, when  8 their building projects came in. They were not precise  9 to the red-magenta, or whatever it was.  10 The buildings, those boxes didn't fit because  11 there was some understanding about how those aspects of  12 this -- but generally the additions occurred where the  13 boxes were.  14 Q. Okay. So it's your testimony that Edgewood  15 knew that if something wasn't identified in the master  16 plan it would not be permitted?  17 A. Generally, yes. With the understanding of  18 reasonableness, right? So like the selling of snow  19 cones in the cafeteria is not going to show up in the  20 master plan. I'm providing a ridiculous hypothetical  21 for you.  22 But the basic blueprint with expectations and  23 details is their adopted master plan, which they were  24 integral in crafting. I was not part of the  25 negotiation, if you call it that, with the neighborhoods</p>
<p style="text-align: right;">Page 79</p> <p>1 notified by you or anyone else that any activity not  2 described in sufficient detail would be prohibited?  3 A. I would say broadly, yes. We made it very  4 clear to Edgewood, the alder person in the district at  5 the time -- and by Edgewood, I'm speaking to the main  6 people working on this at the time.  7 So, you know, I don't recall if it was -- if  8 Mike Hall engaged, Mike Elliot was or not. But we made  9 it very clear and everyone involved was quite happy that  10 we would have a document that would be able to guide and  11 manage everyone's expectations of the use and  12 development of the property.  13 Q. You said "we made it very clear." Who was the  14 "we" that was conveying that message?  15 A. It would be myself, probably also involved in  16 the conversation would have been Tim Parks. The  17 planning director at time was a fellow named Brad  18 Murphy, who had been involved in many of the very  19 contentious approvals at Edgewood over the years.  20 The alderperson for the district, I believe,  21 was Susan Ellingson at the time. I think she was the  22 alder back then.  23 There were direct conversations with people  24 from the neighborhoods, their leadership people, some of  25 them I've been interacting with for as long as I have</p>	<p style="text-align: right;">Page 81</p> <p>1 in Edgewood. However, I had a check on -- like a review  2 and check on the workability of it.  3 Q. Sure. So look at the Campus-Institutional  4 District, Exhibit 13. Do you have that in front of you,  5 sir?  6 A. Yeah.  7 Q. I'm looking at subsection 7, "Final Building,  8 Structured Parking, and Surface Parking Design Review."  9 Sub A, "All Campus Master Plans shall identify  10 building location and maximum height. All buildings  11 properly identified on a Campus Master Plan must be  12 reviewed and approved by an Architectural Review  13 Committee prior to construction."  14 So it looks like buildings that are properly  15 identified get, what I would call, either expedited or  16 perhaps a facilitated review at the Architectural Review  17 Committee level; is that fair?  18 MS. ZYLSTRA: Object to form. You can answer.  19 A. No, I just think they get reviewed. There is  20 nothing expedited about it. But it's just done.  21 Q. But there is no conditional use permit  22 requirement if it's on the master plan. It gets  23 reviewed instead at the Architectural Review Committee  24 level; is that right?  25 A. Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. In your experience, is the Architectural 2 Review Committee review easier to attain and satisfy 3 than a conditional use permit? 4 A. It depends. I mean, one is -- there is 5 different standards. Like a conditional use permit is 6 almost -- it's like a pass/fail. 7 And architectural review, in this context, 8 assumes the buildings are permissible, and it's talking 9 about how they look, how they are oriented, how they 10 orient, you know, their height, design, materials, 11 things along those lines. 12 So the building is given -- it's already 13 assumed it's okay. You've worked out that detail. 14 You're not at the point of pass/fail. 15 Q. Okay. So what's the -- I'm hard pressed to 16 see the benefit as to why someone would have a master 17 plan as opposed to just stick with the 18 Campus-Institutional District zoning. 19 Do you have an understanding of the benefits 20 that the campus -- that the master plan is intended by 21 statute to confer? 22 A. I find your statement shocking, to be honest. 23 Shocking. 24 Q. I'm asking you to explain it to me, because I 25 don't understand why a school like Edgewood would put a</p>	<p style="text-align: right;">Page 84</p> <p>1 consistent with the master plan, that did not require 2 conditional use, were not called high risk from the 3 conditional use process. They simply went through their 4 Architectural Review Committee, submitted building 5 permits and constructed. 6 And that, people could probably agree, is a 7 positive as compared to the past which was a great 8 challenge. 9 Q. So those projects that were approved under the 10 master plan that you just referenced, you don't think 11 would have been able to pass under the prior regime; is 12 that fair? 13 MS. ZYLSTRA: Objection. Form, foundation. 14 You can answer. 15 A. No, that's not what I'm saying at all. I'm 16 saying that Edgewood asked us to create a more 17 predictable and -- a more predictable and, I will argue, 18 an easier way for those projects to be approved and 19 allowed which resulted in the CI District. 20 I will -- one thing I could -- I mean, I guess 21 they decide what's hard or not, but they are the ones 22 that asked us to create this district to make it easier. 23 Q. Who at Edgewood made that request? 24 A. We were -- the person that was running point 25 on for the three schools at Edgewood was Maggie</p>
<p style="text-align: right;">Page 83</p> <p>1 master plan in because I don't understand what the 2 benefit is. 3 So maybe you can explain it to me. 4 A. Sure. So the history of Edgewood's 5 development and its expansion over time involved a 6 significant amount of tension between the two adjoining 7 neighborhoods and their associations and their 8 neighbors, okay. 9 And the reason why the Campus-Institutional 10 District exists is because Edgewood, along with UW and 11 Madison College, asked the city to find a better path 12 for their approvals, including a way to work out their 13 building expansions, interests outside of the high 14 stakes pass/fail process that is a conditional use. 15 They indicated to us that the detail, expense, 16 effort involved in preparing a conditional use 17 application for a building that could be denied was 18 relatively inequitable from their thought about what it 19 should take to work out these details. 20 And so they were front and center asking us to 21 help them create a better path for the evolution of 22 their campus, right. 23 So that's what the master plan did, was -- and 24 if you look at the site in 2013 to today, they executed 25 a number of building projects under the master plan,</p>	<p style="text-align: right;">Page 85</p> <p>1 Balistreri-Clarke. 2 Q. You're saying that the campus -- are you 3 saying that the Campus-Institutional District zoning 4 ordinance was created at the request of Edgewood High 5 School? 6 A. Edgewood High School, the University of 7 Wisconsin, and Madison College -- Madison Area Technical 8 College at the time -- were the three institutions that 9 approached the city. 10 They met with our consultant, they met with 11 staff, they met with the alderpersons that surrounded 12 their holdings with this interest. 13 Q. And at the creation of this district was there 14 recognition by Edgewood that a tradeoff would be that 15 anything not in a master plan would not be approved or 16 would not be permitted? 17 A. I wouldn't use the term "tradeoff." I mean, 18 it was seen as an all-encompassing guiding document with 19 an alteration process if they wanted to make changes. 20 Q. So anything not identified in a master plan, 21 say, you've got three buildings existing, okay, and you 22 have three buildings and those are identified in the 23 master plan. Three future buildings, proposed 24 buildings, are also identified and specified. And then 25 there is three vacant lots in the master plan.</p>

<p style="text-align: right;">Page 86</p> <p>1 And over the course of the 10 years of the</p> <p>2 master plan, maybe in year six a change -- you know,</p> <p>3 something happens at the property owner -- I'm not</p> <p>4 talking about Edgewood. With the property owner.</p> <p>5 And they decide, you know what, we'd really</p> <p>6 like to change that vacant lot which was used previously</p> <p>7 for a permissible use under the CI District ordinance to</p> <p>8 a new, but otherwise, permitted use under the CI</p> <p>9 District ordinance, but it's not in the master plan.</p> <p>10 Is it your understanding that the only way</p> <p>11 that that property owner can get that unspecified</p> <p>12 project approved is to amend the master plan?</p> <p>13 MS. ZYLSTRA: Objection. Form. You can</p> <p>14 answer.</p> <p>15 A. I believe that, yes, we would want an</p> <p>16 amendment to the master plan to provide detail for the</p> <p>17 use developments that was not outlined in the</p> <p>18 pre-existing master plan at year six.</p> <p>19 Q. Even if the change that was being proposed in</p> <p>20 the absence of a master plan would be governed by a</p> <p>21 permitting process even lesser than a conditional use</p> <p>22 permit process?</p> <p>23 MS. ZYLSTRA: Same objection. You can answer.</p> <p>24 A. You just gave me a hypothetical that doesn't</p> <p>25 relate to a master plan.</p>	<p style="text-align: right;">Page 88</p> <p>1 have -- first off, I mean, these campus master plans</p> <p>2 talk a lot about lighting.</p> <p>3 So what you're saying is that the city would</p> <p>4 have approved a document that had gaps in it maybe.</p> <p>5 Q. They talked about lighting with respect to the</p> <p>6 four buildings that were already on -- the two buildings</p> <p>7 that were already on the property.</p> <p>8 A. Well, I think if they had very prescriptive</p> <p>9 language in the master plan, that yes, we would want to</p> <p>10 do something to memorialize the change.</p> <p>11 That's the kind of thing, like parking lot for</p> <p>12 lighting for an existing parking lot, though, I'm not</p> <p>13 sure necessarily that that would be perceived as a major</p> <p>14 thing. It might even be -- I don't know. It's hard to</p> <p>15 classify something like that.</p> <p>16 Q. You talked about parking lots before and you</p> <p>17 advised that adding lighting to parking lots is not the</p> <p>18 kind of lighting application under 10.085 that you would</p> <p>19 typically give closer review to because it's very</p> <p>20 straightforward; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Now, we live in Wisconsin and we know that</p> <p>23 parking lots aren't just used for parking; correct?</p> <p>24 MS. ZYLSTRA: Object to form. You can answer.</p> <p>25 A. Parking lots are used are -- yeah, I'm not</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Sure.</p> <p>2 A. So are you saying an under 4,000 square foot</p> <p>3 building in a CI District that doesn't have a master</p> <p>4 plan?</p> <p>5 Q. No. All right. Let's go back to your parking</p> <p>6 example.</p> <p>7 You've got the unspecified property. It's not</p> <p>8 recognized in the master plan as having any kind of</p> <p>9 proposed use, right?</p> <p>10 A. So now you're saying that there is a master</p> <p>11 plan.</p> <p>12 Q. There is a master plan, a parking lot. It's</p> <p>13 just a parking lot, no lighting. And there is no</p> <p>14 proposal in the master plan that governs lighting.</p> <p>15 But in year six of the master plan the owner</p> <p>16 decides I want to add lighting to my parking lot. The</p> <p>17 lighting would otherwise be governed by 10.085.</p> <p>18 But you're saying they can't add that lighting</p> <p>19 unless they amend the master plan.</p> <p>20 Is that your interpretation of the master plan</p> <p>21 requirement under the Campus-Institutional District</p> <p>22 zoning ordinance?</p> <p>23 MS. ZYLSTRA: Object to form. You can answer.</p> <p>24 A. I -- yeah, I -- I'm not sure. That's an</p> <p>25 interesting hypothetical. A parking lot that does not</p>	<p style="text-align: right;">Page 89</p> <p>1 sure where you're going with this.</p> <p>2 Q. You live in Madison, Wisconsin.</p> <p>3 A. Yeah, yeah.</p> <p>4 Q. Monroe Street, parking lots are used to --</p> <p>5 they are walled off and used for parties and tailgates</p> <p>6 for game day all the time.</p> <p>7 A. Yes. Five times a year.</p> <p>8 Q. At least. Neighbors decide we don't want</p> <p>9 lights for that parking lot because it's going to be</p> <p>10 used to host tailgates into the wee hours of the night.</p> <p>11 In fact, the property owner even brought temporary</p> <p>12 lighting in, right?</p> <p>13 So in that situation, why wouldn't you give a</p> <p>14 parking lot the kind of enhanced review for lighting</p> <p>15 application that you're describing now that you gave to</p> <p>16 Edgewood High School?</p> <p>17 MS. ZYLSTRA: Objection. Form. You can</p> <p>18 answer.</p> <p>19 A. So we look at a parking lot, in the use of a</p> <p>20 parking lot, we're by and large not looking at the</p> <p>21 one-offs, the five times a year, the unusual or unique</p> <p>22 conditions. We're treating them as reviews for lighting</p> <p>23 and parking lots.</p> <p>24 Those light levels may or may not even meet</p> <p>25 code requirements for temporary uses. I don't know. It</p>

<p style="text-align: right;">Page 90</p> <p>1 depends.</p> <p>2 With the exception of tailgating, which we</p> <p>3 don't regulate, when people do want to take down parking</p> <p>4 lots in a normal place for a bar party or something like</p> <p>5 that, a temporary use of a Christmas tree lot, we do</p> <p>6 approve those.</p> <p>7 Q. If Edgewood wanted to use its parking lot to</p> <p>8 host tailgating parties for UW Football Saturdays or</p> <p>9 anything like that, would that be an approved use of the</p> <p>10 parking lot under its master plan?</p> <p>11 MS. ZYLSTRA: Objection. Form. You can</p> <p>12 answer.</p> <p>13 A. Our -- the city's position on tailgating, at</p> <p>14 least the city -- the department that I worked for, has</p> <p>15 been that we don't regulate tailgating.</p> <p>16 Q. Is that a policy that Edgewood and other</p> <p>17 property owners in Madison can find and apprise</p> <p>18 themselves of?</p> <p>19 A. No.</p> <p>20 Q. We talked a little bit about -- we're going to</p> <p>21 get back to the rest of the document. You got the fine</p> <p>22 toothed comb out again, so I want to make sure you have</p> <p>23 a chance to relay that.</p> <p>24 We talked a little bit about the standards for</p> <p>25 -- I want to talk a little about standards.</p>	<p style="text-align: right;">Page 92</p> <p>1 zoning administrator can approve a minor alteration that</p> <p>2 are provided the director of the department upon</p> <p>3 recommendation of the alderperson, which is</p> <p>4 consideration of the alderperson.</p> <p>5 And then there is a third option, which is</p> <p>6 substantial alterations, which go through the entire</p> <p>7 process of adoption. And that does refer back to</p> <p>8 Section 28.097(6), which is the standards.</p> <p>9 So you could be in -- I mean, any of the three</p> <p>10 in theory are probably using 28.097(6), but that's the</p> <p>11 standard for consideration of alterations.</p> <p>12 Q. When you look at the Exhibit 13 in subsection</p> <p>13 3, "Secondary Uses," what permissible secondary uses</p> <p>14 does Edgewood's athletic field fall under or what did it</p> <p>15 fall under during the master plan?</p> <p>16 MS. ZYLSTRA: Object to form. You can answer.</p> <p>17 A. Under this was -- what am I looking at this</p> <p>18 again?</p> <p>19 Q. Yeah, you're looking at -- well, let me ask</p> <p>20 you this:</p> <p>21 Edgewood's athletic field is -- regardless of</p> <p>22 whether it was a master plan or not, it falls under one</p> <p>23 of those secondary uses, at least one, right?</p> <p>24 A. Yes.</p> <p>25 Q. And what secondary uses does it constitute?</p>
<p style="text-align: right;">Page 91</p> <p>1 What is the standard, as you read it, in the</p> <p>2 Campus-Institutional District zoning ordinance on master</p> <p>3 plan amendments on Exhibit 13?</p> <p>4 MS. ZYLSTRA: Belated objection to form.</p> <p>5 A. So the standard for a master plan is a map</p> <p>6 amendment. A master plan adoption is a map amendment.</p> <p>7 Map amendments are covered in a later section</p> <p>8 of the zoning code.</p> <p>9 Q. Okay.</p> <p>10 A. And your question, again, was -- can you read</p> <p>11 it back to me?</p> <p>12 (Record read)</p> <p>13 A. Subsection 6 is standards for master plan</p> <p>14 approval.</p> <p>15 Q. Okay. That's what you would cite as the</p> <p>16 standard for an amendment?</p> <p>17 A. For -- oh, I'm sorry, for an amendment. I</p> <p>18 apologize. I thought you meant for -- okay.</p> <p>19 So that is changes to master plan which is</p> <p>20 subsection 10.</p> <p>21 Q. Okay.</p> <p>22 A. And there is a few processes there, and it's</p> <p>23 -- so I believe that the -- depending on what processes</p> <p>24 you're in. Because there are three options:</p> <p>25 One is Plan Commission. The second is the</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yeah, I think it's -- without a master plan,</p> <p>2 it's generally probably going to fall under the -- it</p> <p>3 could be under 5, it could be under 14, which is a very</p> <p>4 open-ended consideration.</p> <p>5 And then in terms of the master plan, I mean,</p> <p>6 it says in the master plan, it's identified in the Open</p> <p>7 Spaces Plan.</p> <p>8 Q. Sure. But the use, the use of it is as an</p> <p>9 indoor and outdoor -- sorry, as an outdoor sports</p> <p>10 facility; correct?</p> <p>11 MS. ZYLSTRA: Object to form. You can answer.</p> <p>12 Q. No. 5, under (b)?</p> <p>13 A. The use of the facility, when.</p> <p>14 Q. I'm just saying an athletic field would fall</p> <p>15 under (3)(b)5. Do you agree or disagree with that?</p> <p>16 MS. ZYLSTRA: Object to form.</p> <p>17 A. Generally speaking, an athletic field could</p> <p>18 fall under (3)(b)5.</p> <p>19 Q. An athletic field that is being used for</p> <p>20 practices, for Phy Ed classes, also falls under (3)(b)5;</p> <p>21 correct?</p> <p>22 MS. ZYLSTRA: Object to form.</p> <p>23 A. Um, 5 -- yes.</p> <p>24 Q. An athletic field that is used to host games</p> <p>25 falls under (3)(b)5 as well; correct?</p>

<p style="text-align: right;">Page 94</p> <p>1 MS. ZYLSTRA: Object to form.</p> <p>2 A. Could be. Yep, it could.</p> <p>3 Q. An athletic field that hosts games at night</p> <p>4 with lights also could fall under (3)(b)5 as well;</p> <p>5 correct?</p> <p>6 MS. ZYLSTRA: Object to form.</p> <p>7 A. I think you're probably leaning more towards</p> <p>8 16 in that one. But I mean, we have conflicting -- you</p> <p>9 know, there is overlap here.</p> <p>10 So you tend to -- at least when I had always</p> <p>11 administered zoning, you know, what you just described I</p> <p>12 think it was more like 16 than 5.</p> <p>13 Q. Sure. Have you ever seen an outdoor sports</p> <p>14 facility with lights that doesn't rise to the level of</p> <p>15 being a stadium?</p> <p>16 A. Outdoor sports facility with lights that</p> <p>17 doesn't arise to the level of being a stadium. Yes.</p> <p>18 Whatever an outdoor sports facility means. I</p> <p>19 don't really know what that means, but --</p> <p>20 Q. Well, do you not have an interpretation of</p> <p>21 what an outdoor sports facility is?</p> <p>22 A. As we're talking?</p> <p>23 Q. As the former zoning administrator and as the</p> <p>24 current building inspection department director, do you</p> <p>25 have an interpretation of what an outdoor sports</p>	<p style="text-align: right;">Page 96</p> <p>1 sports. I might call that recreation.</p> <p>2 Q. Sure.</p> <p>3 A. And then you might call a contest between two</p> <p>4 teams recreation and I might call it sports.</p> <p>5 If I use that term, I don't know, I struggle</p> <p>6 with those terms.</p> <p>7 Q. And that might be why those two are grouped</p> <p>8 together under 5?</p> <p>9 MS. ZYLSTRA: Object to form.</p> <p>10 Q. Because of the difficulty in distinguishing</p> <p>11 between sports and recreation, we should just put them</p> <p>12 together in the same -- in the same branch for ease of</p> <p>13 interpretation?</p> <p>14 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>15 You can answer.</p> <p>16 A. Well, considering the all-encompassing nature</p> <p>17 of the CI District, I think there was an idea of trying</p> <p>18 to group outdoor things together.</p> <p>19 And just the basic language of the basic</p> <p>20 district as common people may look at it, both people</p> <p>21 that are in the district, people that live in proximity</p> <p>22 to the district.</p> <p>23 Q. So going back to my discussion about the</p> <p>24 evolution of the athletic field.</p> <p>25 The athletic field that is used for practices</p>
<p style="text-align: right;">Page 95</p> <p>1 facility is?</p> <p>2 MS. ZYLSTRA: Object to form. You can answer.</p> <p>3 A. I think we would find a position on something,</p> <p>4 yes. We would -- we would, you know, consider what</p> <p>5 we're looking at. It's a very broad question.</p> <p>6 Is a backstop at a field an outdoor sports</p> <p>7 facility? Is a golf course an outdoor sports facility?</p> <p>8 I mean, those are two very distinctly different things.</p> <p>9 Q. So are you kind of resting then on this -- you</p> <p>10 seem to be focusing on the word "facility" and is a</p> <p>11 field a facility.</p> <p>12 MS. ZYLSTRA: Object to form. You can answer.</p> <p>13 A. I think I'm more about sports. I don't --</p> <p>14 that's -- I would want to speak in more precision than</p> <p>15 generality on something like that.</p> <p>16 Q. So sports and recreational. Do you draw a</p> <p>17 distinction between sports and recreation?</p> <p>18 MS. ZYLSTRA: Object to form.</p> <p>19 A. Yes.</p> <p>20 Q. And what's that distinction, what's the</p> <p>21 difference?</p> <p>22 MS. ZYLSTRA: Same objection.</p> <p>23 A. Well, once again, like sports, are we talking</p> <p>24 -- you know, you might classify a group of brothers</p> <p>25 getting together to play football on Christmas Day as</p>	<p style="text-align: right;">Page 97</p> <p>1 and the athletic field that is used for games and the</p> <p>2 athletic field that is used for games at night under</p> <p>3 lights.</p> <p>4 Under each step of that, kind of what I'll</p> <p>5 call an evolution, in each step of that process, it</p> <p>6 still has never left and remains categorized as a</p> <p>7 permitted use under (3)(b)5; correct?</p> <p>8 MS. ZYLSTRA: Objection. Form.</p> <p>9 A. One of my -- like, who am I looking at this?</p> <p>10 I'm not really understanding --</p> <p>11 Q. Your testimony before was that an athletic</p> <p>12 field where the practices occur on is permitted</p> <p>13 secondary use under (3)(b)5.</p> <p>14 A. Okay.</p> <p>15 Q. Right. Your testimony before was that an</p> <p>16 athletic field upon which games were played is also no</p> <p>17 change, it's a (3)(b)5 permitted use; correct?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And then if their games are played at night</p> <p>20 under lights, it's still a (3)(b)5 permitted use;</p> <p>21 correct?</p> <p>22 MS. ZYLSTRA: Objection. Form.</p> <p>23 A. Yeah, it could be, yes.</p> <p>24 Q. If the only differences are the types of</p> <p>25 activities that are occurring on that field, all of</p>



<p style="text-align: right;">Page 98</p> <p>1 which are athletic in nature or recreational in nature,  2 and the timing of when those activities occur, it's  3 still being used for outdoor sports or recreation; isn't  4 that true?  5 MS. ZYLSTRA: Objection. Form.  6 A. I believe so, yes.  7 Q. And under subsection 10 of the  8 Campus-Institutional District, only a change to a  9 proposed use of an identified space is considered an  10 alteration that requires an amended master plan;  11 correct?  12 A. No.  13 Q. So changing types of activities of a (3)(b)5  14 outdoor sports and recreational facility requires master  15 plan approval?  16 MS. ZYLSTRA: Object to form.  17 Q. I'm sorry, master plan amendment approval.  18 MS. ZYLSTRA: Same objection. You can answer.  19 A. Now, once again, you're -- I'm not  20 understanding under what -- so it sounds like you're  21 talking about no master plan and then your question  22 jumps back into whether a master plan exists or not.  23 I'm not --  24 Q. No, I'm assuming your master plan at all --  25 well, we're talking about secondary uses, talking about</p>	<p style="text-align: right;">Page 100</p> <p>1 context of a master plan?  2 A. The master plan that is adopted, which is  3 approved consistent with the ordinance, is what applies.  4 Q. And that ordinance says that the master plan  5 should -- when we're talking about uses. Uses are laid  6 out in (3)(a) and (3)(b); correct?  7 MS. ZYLSTRA: Object to form.  8 A. There is a -- there is the indication of the  9 uses that is, however, there is an adopted master plan  10 that we would look at, that we would -- we would steer  11 to.  12 We would not be looking at Section 28.097,  13 because there is an adopted master plan that has  14 encompassed all of the -- it should encompass all of the  15 requirements of Section 28.097.  16 So I'm not looking at Section 28.097. I'm  17 looking at the master plan. This is a -- this is a  18 document that has been approved by the city that is  19 effectively a guiding document for the questions that  20 you're asking.  21 Q. But the questions I'm asking relate to when a  22 master plan is required to be amended and you pointed to  23 Section 10. Section 10 uses the phrase "use," proposed  24 use, changes to proposed use.  25 Are you saying that the word "use" in Section</p>
<p style="text-align: right;">Page 99</p> <p>1 secondary uses, right?  2 A. Right.  3 Q. And master plans have to identify use, right?  4 A. Right.  5 Q. And we have been talking the entire time about  6 (3)(b)5 indoor and outdoor sports and recreational  7 facilities.  8 And my question is, only if you're changing  9 the nature of the secondary use under (b), that is the  10 only type of change on an open space proposed use as we  11 see under 10:  12 "No alteration of an approved Campus Master  13 Plan, including changes of the proposed use of  14 identified open space areas."  15 Here -- and the example of the different types  16 of athletic fields, all those were the same proposed  17 use, (3)(b)5; correct?  18 MS. ZYLSTRA: Objection. Form, misstates  19 prior testimony. You can answer.  20 A. This isn't relevant. We're in a master plan.  21 This ordinance that you're asking me about questions is  22 not where I am working. I'm working in this master  23 plan.  24 Q. So the subsection (3)(a) and (b) of the CI  25 District ordinance, 28.097, does not apply in the</p>	<p style="text-align: right;">Page 101</p> <p>1 10 does not relate or refer to the uses that are  2 outlined in (3)(a) and (3)(b) of the same statute?  3 A. I think it does, but that has been  4 incorporated into the master plan.  5 So the master plan document has gone through  6 and established the approved location and other aspects  7 of those uses in the master plan.  8 Q. So you're saying if the master plan can be  9 more specific of the type of (3)(b)5 outdoor sports  10 facility, and that that master plan, therefore, that  11 level of specificity controls for purposes of when an  12 amendment would be required; is that right?  13 A. That is, we would expect that the detail --  14 the master plan is many more pages than the zoning code.  15 The master plan will have the detail that we  16 would look to for understanding the conditions by which  17 that use is allowed to occur.  18 Q. And those expectations that you have, you've  19 referenced your expectations multiple times, those  20 expectations come from years of interpreting multiple  21 Campus-Institutional District master plans; correct?  22 MS. ZYLSTRA: Object to form.  23 A. There are two Campus-Institutional master  24 plans. That would not be -- I would have a different  25 basis than that, which is the basis by which a master</p>



<p style="text-align: right;">Page 102</p> <p>1 plan is approved which is outlined in the ordinance.</p> <p>2 Q. So your expectations have been established by</p> <p>3 and are being exercised upon the very first</p> <p>4 Campus-Institutional master plan seen by the City of</p> <p>5 Madison; correct?</p> <p>6 MS. ZYLSTRA: Object to form. You can answer.</p> <p>7 A. Somebody had to be first.</p> <p>8 Q. Be careful what you wish for, right,</p> <p>9 Mr. Tucker?</p> <p>10 A. They like the permits they got. The structure</p> <p>11 of this ordinance and the process for approval -- I'm</p> <p>12 trying to get my words right here. Let's see if I can</p> <p>13 find it.</p> <p>14 When you look at the Statement of Purpose of</p> <p>15 the master plan, it is intended to provide clarification</p> <p>16 between the institution and its neighbors.</p> <p>17 So the expectation is they have a blank slate</p> <p>18 to write this master plan in consideration of the</p> <p>19 primary and secondary uses. They have an opportunity to</p> <p>20 provide significant detail, and that detail is relied</p> <p>21 upon between the partners to understand the use of the</p> <p>22 property under the terms of the master plan.</p> <p>23 Q. The neighborhoods and the neighbors are not a</p> <p>24 party to this master plan, are they?</p> <p>25 MS. ZYLSTRA: Object to form.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I don't know what you mean, but adopted master</p> <p>2 plans were tasked with enforcing, so --</p> <p>3 Q. Is a master plan an agreement between the</p> <p>4 property owner and the property owner's neighbors?</p> <p>5 MS. ZYLSTRA: Object to form. You can answer.</p> <p>6 A. No.</p> <p>7 Q. The master plan identifies a space on the</p> <p>8 property as a proposed tennis court.</p> <p>9 A. Are you asking or telling?</p> <p>10 Q. I'm asking a question.</p> <p>11 A. Oh, okay. I'm sorry.</p> <p>12 Q. If a property on -- a property that identifies</p> <p>13 a space in its master plan as a proposed tennis court,</p> <p>14 if the property ever changes its mind and wants to make</p> <p>15 a basketball court instead, does that require a master</p> <p>16 plan amendment?</p> <p>17 MS. ZYLSTRA: Objection to form. You can</p> <p>18 answer.</p> <p>19 A. In its purest sense, I would say that if they</p> <p>20 wrote themselves into a tight box that said "basketball</p> <p>21 court" and they wanted -- or "tennis court" and they</p> <p>22 wanted to switch to a basketball court, they've written</p> <p>23 themselves into a tight box.</p> <p>24 We would be more than happy to consider as an</p> <p>25 alteration clarification of the language so there was no</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Interestingly, this master plan has a section</p> <p>2 that talks about incorporation of previous agreements</p> <p>3 with the neighborhoods. So it has brought into it, in</p> <p>4 the spirit of goodwill and cooperation, the</p> <p>5 understandings. I mean, they are not the neighbors.</p> <p>6 They are in the document.</p> <p>7 Q. You and Mr. Parks, though, recommended repeal</p> <p>8 of the master plan when that issue came before the Plan</p> <p>9 Commission and Common Council; correct?</p> <p>10 A. Yes. I don't know what -- I can't speak on</p> <p>11 behalf of Mr. Parks, and I didn't recommend it, although</p> <p>12 we didn't oppose them repealing it, yeah.</p> <p>13 Q. And as part of that process, it was determined</p> <p>14 -- statements were made that, in essence, this is not a</p> <p>15 contract or an agreement between the neighbors and</p> <p>16 Edgewood that the city should be in the business of</p> <p>17 enforcing; correct?</p> <p>18 MS. ZYLSTRA: Object to form. You can answer.</p> <p>19 A. Can you re-ask me that question again? It had</p> <p>20 a lot in it.</p> <p>21 Q. Yeah. You advised the Plan Commission and the</p> <p>22 Common Council that the master plan is not a traditional</p> <p>23 agreement between Edgewood and its neighbors that the</p> <p>24 city is tasked with enforcing; correct?</p> <p>25 MS. ZYLSTRA: Object to form.</p>	<p style="text-align: right;">Page 105</p> <p>1 ambiguity or question for that institution. That's what</p> <p>2 we do all the time in my job.</p> <p>3 But if they wrote themselves into a tight box,</p> <p>4 we would hold them to those words.</p> <p>5 Q. Is it your expectation that -- well, you've</p> <p>6 talked about your expectations and there has to be a</p> <p>7 certain level of specificity.</p> <p>8 Are you requiring that tight box? Would you</p> <p>9 allow a property owner to just put "court" on a master</p> <p>10 plan such that you're leaving the particular use open?</p> <p>11 MS. ZYLSTRA: Objection. Form.</p> <p>12 A. I don't believe so, because the master plan</p> <p>13 requires you to identify the uses and buildings, like,</p> <p>14 we would look for clarification, generally.</p> <p>15 But I hope you think we're not that -- well,</p> <p>16 let me just say, like, we have two master plans that we</p> <p>17 have dealt with in this scenario and we strive for</p> <p>18 clarity in the words in those master plans. We have one</p> <p>19 now, but we had two.</p> <p>20 MR. INGRISANO: Mark this as the next exhibit,</p> <p>21 please.</p> <p>22 (Exhibit 39 marked)</p> <p>23 Q. MR. INGRISANO: Sir, I'm handing you what's</p> <p>24 been marked as Exhibit 39. Are you familiar with this</p> <p>25 document?</p>

<p style="text-align: right;">Page 106</p> <p>1 A. Yes.</p> <p>2 Q. Have you seen it before?</p> <p>3 A. Yeah, I probably reviewed it back in 2014.</p> <p>4 Q. And this is the Planning Division Staff Report</p> <p>5 prepared for the Plan Commission, dated March 24, 2014;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And the application type is adopting</p> <p>9 Campus-Institutional CI District master plan, and this</p> <p>10 is the Edgewood matter, right?</p> <p>11 A. Yes.</p> <p>12 Q. Let me ask you to turn -- referencing the</p> <p>13 pagination on the top right-hand corner, let me ask you</p> <p>14 to turn to page 8 of 12.</p> <p>15 And let me ask you to look at the one, two,</p> <p>16 three -- fourth paragraph there and read along with me</p> <p>17 here:</p> <p>18 "The master plan document includes a series of</p> <p>19 agreements between the institutions and the</p> <p>20 Dudgeon-Monroe and Vilas neighborhood associations,</p> <p>21 which were created to address past as well as</p> <p>22 anticipated future issues related to the campus. These</p> <p>23 agreements are included in the plan by reference, and</p> <p>24 are an essential element in fostering a positive</p> <p>25 relationship between the campus and its neighbors.</p>	<p style="text-align: right;">Page 108</p> <p>1 through its role on the proposed Architectural Design</p> <p>2 Review Committee in Section 4.5 and an assisting in</p> <p>3 resolving any conflicts that may emerge in the future,</p> <p>4 but not through zoning enforcement."</p> <p>5 Do you see that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. So let me ask you this:</p> <p>8 The agreements between Edgewood and its</p> <p>9 neighbors have nothing to do with your department; isn't</p> <p>10 that right?</p> <p>11 MS. ZYLSTRA: Objection. Form.</p> <p>12 Q. And that they are completely unrelated to the</p> <p>13 enforcement of CI District ordinance in the master plan?</p> <p>14 MS. ZYLSTRA: Same objection.</p> <p>15 A. I'm not intimately familiar with the</p> <p>16 agreements between Edgewood and its neighbors.</p> <p>17 But generally, our office doesn't get into</p> <p>18 enforcement of private agreements between property</p> <p>19 owners.</p> <p>20 Q. Consistent with the language in Mr. Parks'</p> <p>21 memo that you're familiar with, where it says,</p> <p>22 "enforcement of those agreements rests outside the</p> <p>23 city's zoning powers"; correct?</p> <p>24 MS. ZYLSTRA: Same objection.</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 However, it should be noted that the city is not</p> <p>2 specifically a party to the agreements in Sections 4.2</p> <p>3 and 4.3, and enforcement of those agreements rests</p> <p>4 outside of the city's zoning powers. Additionally, the</p> <p>5 agreement in Section 4.4 regarding the implementation of</p> <p>6 the master plan and future operations of the campus</p> <p>7 would also not likely be enforced through the city's</p> <p>8 zoning powers."</p> <p>9 Did I read that correctly?</p> <p>10 MS. ZYLSTRA: Objection. Rule of</p> <p>11 completeness.</p> <p>12 Q. Is there anything in the last few sentences in</p> <p>13 that paragraph render what I just read to you misleading</p> <p>14 or un-understandable?</p> <p>15 A. Sorry, you're starting with the word</p> <p>16 "however"?</p> <p>17 Q. I started with the word "The master plan</p> <p>18 document," through there.</p> <p>19 A. Oh, okay.</p> <p>20 Q. I'll keep reading the rest of the paragraph.</p> <p>21 "While the city will have a regulatory role in</p> <p>22 implementing the master plan through its review of</p> <p>23 specific projects against the final approved plan and</p> <p>24 City ordinances, staff foresees participating in the</p> <p>25 implementation of the past and proposed agreements</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. So while fostering goodwill between</p> <p>2 Edgewood and its neighbors is a nice aspiration, it's</p> <p>3 not part of your job in deciding Edgewood's rights and</p> <p>4 restrictions to its property under the zoning</p> <p>5 ordinances; correct?</p> <p>6 MS. ZYLSTRA: Objection. Form.</p> <p>7 A. So can you like -- can you read that -- can</p> <p>8 you ask me that question again?</p> <p>9 Q. My simple question was, while fostering</p> <p>10 goodwill and good relations between Edgewood and its</p> <p>11 neighbors is a nice aspirational goal for the city, it's</p> <p>12 not part of your zoning enforcement responsibilities;</p> <p>13 correct?</p> <p>14 A. Oh, zoning enforcement?</p> <p>15 Q. Yes.</p> <p>16 A. No.</p> <p>17 Q. All right. I don't think we've gotten our way</p> <p>18 through Exhibit 7. So we left off, again, talking about</p> <p>19 the provisions of the master plan that you were relying</p> <p>20 upon.</p> <p>21 A. Could we pause for just a little bit so I</p> <p>22 could use the bathroom? Or do you want me to finish --</p> <p>23 you're in a question, so I don't --</p> <p>24 Q. Well, let me ask you this.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. How many more sections of the master plan are</p> <p>2 you going to highlight for me?</p> <p>3 A. Three or four maybe.</p> <p>4 MR. INGRISANO: Okay. Why don't we take a</p> <p>5 break then.</p> <p>6 (Lunch Recess)</p> <p>7 BY MR. INGRISANO:</p> <p>8 Q. All right. Mr. Tucker, we are going to get</p> <p>9 through Exhibit 7 if it kills us both.</p> <p>10 A. I'm up.</p> <p>11 Q. So, again, we're looking through Exhibit 7 to</p> <p>12 identify what you had relied upon in coming to your</p> <p>13 conclusion that the Edgewood lighting application should</p> <p>14 be withheld because of the contents of the master plan.</p> <p>15 Is that a fair recitation of our exercise?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And as we left off last, I believe I</p> <p>18 was on page 48 of 228 of Exhibit 7, where you had</p> <p>19 pointed out the second bullet point from the bottom on</p> <p>20 the left-hand column that said, "Ensure that parking</p> <p>21 ramp interior and lighting is not visible from Woodrow</p> <p>22 Street at any time."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. If we are done talking about this page, can we</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I think that that's it.</p> <p>2 Q. Okay. So all those provisions you just</p> <p>3 pointed me to I believe dealt with the subject of the</p> <p>4 lighting; is that correct?</p> <p>5 A. Yeah, that make reference to lighting, uh-huh.</p> <p>6 Q. You had mentioned that at some point in time,</p> <p>7 in Exhibit 3, after Christina Thiele advanced her</p> <p>8 workflow, checked the -- you know, had the drop down</p> <p>9 approved, you said this matter came to your attention.</p> <p>10 But if I'm recalling correctly you don't</p> <p>11 recall precisely how it came to your attention?</p> <p>12 A. Yeah, I don't recall. We just became aware</p> <p>13 that the lighting submission on Exhibit 3 had been</p> <p>14 advanced to completion.</p> <p>15 Q. Got it. When you say "we," I got the sense at</p> <p>16 some point after that came to your attention there was a</p> <p>17 group that kind of sort of got together and began</p> <p>18 looking at this issue and that group at least included</p> <p>19 you and Mr. Strange and George Hank; is that fair?</p> <p>20 A. Yes.</p> <p>21 Q. Is there anyone else in that group that would</p> <p>22 have been getting together to put their heads together</p> <p>23 on this?</p> <p>24 A. Not that I recall, but it wouldn't surprise me</p> <p>25 if Mike May, being the city attorney, wasn't</p>
<p style="text-align: right;">Page 111</p> <p>1 move on to your next provision that you found to be</p> <p>2 important?</p> <p>3 A. Sure. So the next one will be -- we talked</p> <p>4 about page 55 already. We actually jumped back.</p> <p>5 So the next one will be up on page 58. And</p> <p>6 this is another -- this is in -- this is under a</p> <p>7 subsection called "Architectural Guidelines for</p> <p>8 Perimeter Buildings.</p> <p>9 And sub 7, which identifies site and building</p> <p>10 lighting language, and there is an (a) and a (b) that</p> <p>11 relates to lower height site lighting and non-glare and</p> <p>12 cutoff shielding.</p> <p>13 Good detail for us to rely on in understanding</p> <p>14 lighting relative to this section.</p> <p>15 Q. Okay. Thank you. Next?</p> <p>16 A. We've got -- there is another -- this is</p> <p>17 weird, actually, this one.</p> <p>18 There is the subsection on page 80 that talks</p> <p>19 about lighting, so it talks about pole lights at the</p> <p>20 east and west ends of campus.</p> <p>21 It's on page 80, on the right side, No. 4,</p> <p>22 talking about site lighting, safety lights being turned</p> <p>23 off, more sensitivity. It kind of relates to the</p> <p>24 broader context of lighting across the campus.</p> <p>25 Q. Okay. Next?</p>	<p style="text-align: right;">Page 113</p> <p>1 tangentially involved.</p> <p>2 Q. Sure. Do you have a sense of when this group</p> <p>3 began looking at this issue, the issue of the lights and</p> <p>4 the master plan applicability?</p> <p>5 A. Yes. We had been interacting with Attorney</p> <p>6 Nathan Wautier who was sort of fronting on this project</p> <p>7 for Edgewood.</p> <p>8 And because we had a pending application for</p> <p>9 alteration of the master plan that was submitted and we</p> <p>10 were in ongoing conversations -- some I participated in,</p> <p>11 others I did not -- about different alternatives that</p> <p>12 would be available for Edgewood to have an opportunity</p> <p>13 to have lighting approved, or whatever else it is they</p> <p>14 may have wanted -- call it stadium, call it games, call</p> <p>15 it a change to reflect their usage of the space</p> <p>16 consistent with what I had learned from that October</p> <p>17 meeting.</p> <p>18 Q. But, again, I think where I'm trying to get a</p> <p>19 sense from is more the timing.</p> <p>20 At one point you referenced that your group</p> <p>21 sat down, read through the master plan, and I think the</p> <p>22 phrase you used was "fine toothed comb."</p> <p>23 When was the fine toothed comb pulled out and</p> <p>24 when were you kind of getting yourself comfortable with</p> <p>25 the idea that the master plan and the provisions that</p>

<p style="text-align: right;">Page 114</p> <p>1 you've identified for us permitted, if not justified, 2 withholding that permit? 3 MS. ZYLSTRA: Object to form. You can answer. 4 A. So, Nathan Wautier kept coming back to us with 5 hypotheticals, alternative ideas, questions, and it was 6 -- you know, we needed to respond. 7 And so it was after -- I would say it would be 8 in the beginning of March, early March, that we were -- 9 you know, to respond to those we were spending time, I 10 guess, if you will, because they weren't -- they weren't 11 proceeding with their application for alteration for 12 some reason that we couldn't understand. We were 13 struggling to understand why. 14 Q. All right. So there is a disconnect in my 15 mind. I'm going you to ask you to try to help me fill 16 it up. 17 So we go from a situation where Christina 18 Thiele is completing her workflow, there is recognition 19 of a problem that gets communicated to you -- however 20 that happened -- your group pulls out a fine toothed 21 comb and begins the review. 22 What questions was Nathan Wautier asking other 23 than "where is my permit"? 24 MS. ZYLSTRA: Object to form. You can answer. 25 A. So I don't recall or if I was necessarily</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. So at some point in time the problem is 2 recognized, brought to your attention. 3 Is Edgewood informed that -- is Edgewood and 4 Nathan informed that, hey, there is a problem that we're 5 looking into, we're not issuing the permit? 6 A. Oh. I am not aware of when Nathan or 7 representatives of Edgewood's were informed. I just 8 wasn't -- I don't have any recollection of that. 9 Q. So you don't know as far as when Edgewood and 10 Nathan were informed about the existence of a 11 complication that was being reviewed, you don't know 12 when that happened in relation to when you and John and 13 Hank pulled out the fine toothed comb? 14 A. We would have -- we would have studied the 15 master plan and come to a position, and then I believe 16 that we would have informed Edgewood vis-à-vis Nathan, 17 maybe, but I don't really know, once again. 18 And this is happening -- the timing on things 19 is also like there is the -- I'm not exactly sure. And 20 to your -- I mean, I'm not privy to all the 21 conversations and I'm sort of doing my part and -- 22 Q. Do you recall there being any sit down 23 meetings that was part of what I'll call that fine 24 toothed comb process that you were describing where 25 you're sitting down, reviewing the master plans, talking</p>
<p style="text-align: right;">Page 115</p> <p>1 point on discussions with Nathan, because my 2 understanding was he was having conversations with John 3 Strange, which is what happens, you know. It's not 4 unusual for the lawyers to be talking. 5 Q. Lawyers talk to each other. I get it. 6 A. Yeah. So I get -- I get sort of brought back 7 in, in consideration of these ongoing discussions to 8 process these hypotheticals or understand what it is. 9 Because we're -- I would say we were -- like I 10 said, we were surprised of the lighting plan submission 11 when there was a pending master plan alteration in our 12 office. 13 It was "what do they want to do." We were 14 trying to figure out what -- these are things that we 15 felt a responsibility to respond to, but they were 16 different proposals and it was unclear and so we were 17 trying to un-puzzle that. 18 Q. Sure. I guess where I'm struggling is, at 19 some point in time someone must have apprised Nathan 20 that there was an issue such that he was even asking 21 follow-up questions and posing hypotheticals; is that 22 fair? 23 MS. ZYLSTRA: Objection. Form, foundation. 24 You can answer. 25 A. So your question was what again?</p>	<p style="text-align: right;">Page 117</p> <p>1 through the provisions were your group -- John and 2 Mr. Hank and you -- were you guys meeting in person, 3 were you meeting on the telephone, communicating by 4 email, or some kind of combination of those things? 5 A. I believe we had a meeting in person, and I 6 remember because I recall reviewing the master plan on 7 our -- I have a large television like that, a monitor 8 for us to commonly share. 9 Q. Got it. And that's in your offices? 10 A. Yeah, it would have probably been in my office 11 in the municipal building. 12 Q. Got it. And then so to the best of your best 13 recollection, John and Hank would have been in that 14 in-person meeting? 15 A. Yes. 16 Q. I'm calling him Hank, sorry. Mr. Hank. 17 And then do you know how many meetings the 18 three of you had? 19 A. No. 20 Q. In addition to that meeting with the master 21 plan on the big screen, were there any other telephone 22 calls or emails where you guys were exchanging your 23 thoughts and impressions and analysis on this issue? 24 MS. ZYLSTRA: Same stipulation? 25 MR. INGRISANO: Yeah.</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Not that I recall. Not that I recall.</p> <p>2 Q. To the best of your recollection, you said you</p> <p>3 all went through the master plan with a fine toothed</p> <p>4 comb, you called it, did that review, that detailed</p> <p>5 review of the master plan, did that occur in that</p> <p>6 meeting on that screen, the three of you together,</p> <p>7 walking through the master plan kind of front to back?</p> <p>8 A. What I recall was we focused in on specific</p> <p>9 sections. To be clear, I don't think we -- I don't</p> <p>10 recall us pulling up the master plan and word by word</p> <p>11 going through it, okay, but I recall us spending time</p> <p>12 focusing in on the particulars, the sections, searching</p> <p>13 words, doing what we could to say, okay, really, how do</p> <p>14 we understand how an aspect that is detached from a</p> <p>15 stadium and a press box and a concession stand and</p> <p>16 restroom building, which exclusively lighting falls</p> <p>17 within the context of the master plan. That was what we</p> <p>18 were kind of focusing in on.</p> <p>19 Q. Was the meeting with the big screen, is that</p> <p>20 where your conclusions from the master plan about the</p> <p>21 provisions you just outlined for us, the ones you found</p> <p>22 to be relevant, were those provisions the result of that</p> <p>23 big screen meeting?</p> <p>24 A. I'm not totally sure. By "those provisions,"</p> <p>25 what are you --</p>	<p style="text-align: right;">Page 120</p> <p>1 Exhibit 6. This is a letter from you to Mike Elliot,</p> <p>2 dated February 27, 2019; correct?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. And comparing it to Exhibit 3, the date of</p> <p>5 this letter is the same date that Christina Thiele would</p> <p>6 have completed her workflow on the zoning review; is</p> <p>7 that correct?</p> <p>8 MS. ZYLSTRA: Objection. Form.</p> <p>9 A. No.</p> <p>10 Q. I'm sorry. Is it fair to say that the date of</p> <p>11 this letter is the same date that Mr. Rewey completed</p> <p>12 his workflow on the lighting review?</p> <p>13 A. Yes.</p> <p>14 Q. Did Ms. Thiele, in doing her workflow on March</p> <p>15 -- you said on March 1; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Had she been apprised of your letter dated</p> <p>18 February 27 as part of or prior to her workflow tasks on</p> <p>19 March 1?</p> <p>20 A. I don't recall.</p> <p>21 Q. So the first paragraph of your letter, Exhibit</p> <p>22 6, that's your signature on the bottom of Exhibit 6?</p> <p>23 A. It is, yes.</p> <p>24 Q. First paragraph says, "On Friday, February 22,</p> <p>25 the building inspection division accepted a lighting</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. The provisions you highlighted for me in the</p> <p>2 master plan.</p> <p>3 A. Oh, this. Yeah, we identified --</p> <p>4 Q. Yeah, Exhibit 7.</p> <p>5 A. Sorry to speak on top of you.</p> <p>6 Q. No, that's okay.</p> <p>7 A. That was where we were attempting to find</p> <p>8 anything that would relate to our formulating our</p> <p>9 interpretation to the right associated with the master</p> <p>10 plan showed that Edgewood was allowed to do for use and</p> <p>11 improvement of the facility.</p> <p>12 Q. To the best of your recollection, was that</p> <p>13 meeting -- in that meeting, did you walk into that</p> <p>14 meeting with the master plan provisions already</p> <p>15 identified that you were going to present to Mr. Hank</p> <p>16 and Mr. Strange, or were the provisions that you</p> <p>17 identified in paragraph 7 part of the process from that</p> <p>18 meeting on the big screen?</p> <p>19 MS. ZYLSTRA: Same stipulation?</p> <p>20 MR. INGRISANO: Yes.</p> <p>21 A. I honestly don't recall if I -- you know,</p> <p>22 three years ago, four years ago. I can't remember. I</p> <p>23 don't recall.</p> <p>24 Q. Understood. It was awhile ago. All right.</p> <p>25 I'm handing you what's been marked as</p>	<p style="text-align: right;">Page 121</p> <p>1 plan filed by Forward Electric on behalf of Edgewood</p> <p>2 High School, to install lighting for the school's field.</p> <p>3 Those plans will be reviewed for compliance with MGO</p> <p>4 Section 10.085, and if the plans comply, electrical</p> <p>5 permits will be issued when requested."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. The next line of your letter says, "The City</p> <p>9 believes this permit can be issued without requiring</p> <p>10 amendment of the approved 2014 master plan."</p> <p>11 Did I read that sentence correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Then you go on to discuss the attachment to</p> <p>14 Exhibit 6 which is a letter to Edgewood; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. To the Edgewood Family?</p> <p>17 A. Yes, yes.</p> <p>18 Q. And attaches a Q and A?</p> <p>19 A. Yes.</p> <p>20 Q. Your next paragraph of your letter goes on to</p> <p>21 identify that -- well, it just says:</p> <p>22 "Based on the information the city currently</p> <p>23 has regarding the historical use of the facility, it</p> <p>24 would appear that the intended use of the facility</p> <p>25 outlined in your letter to the Edgewood Family and</p>



<p style="text-align: right;">Page 122</p> <p>1 detailed in the "Frequently Asked Questions" document</p> <p>2 would conflict with the approved 2014 Master Plan for</p> <p>3 the site, which limits use of the facility to team</p> <p>4 practices, physical education classes. Page 42, Section</p> <p>5 3.8, Open Space Plan."</p> <p>6 Did I read that right?</p> <p>7 A. Yes.</p> <p>8 Q. You did not reference the Open Space Plan,</p> <p>9 Section 3.8, in your response to my question about</p> <p>10 Exhibit 7 and the content that you found to be material</p> <p>11 and important to your analysis of whether or not to</p> <p>12 issue the light permit; correct?</p> <p>13 A. Section 7 in the ordinance?</p> <p>14 Q. I'm sorry, Exhibit 7.</p> <p>15 A. Exhibit 7, which is the --</p> <p>16 Q. The master plan. So when you went through</p> <p>17 Exhibit 7, right, to find all the provisions you relied</p> <p>18 upon that you found to be relevant, you did not</p> <p>19 reference 3.8.</p> <p>20 A. Yes, I believe that's correct. It wasn't one</p> <p>21 of the tab sections.</p> <p>22 Q. So in March, then, when you were going through</p> <p>23 with your fine toothed comb working with John Strange</p> <p>24 and Mr. Hank, 3.8 was not relevant to your decision then</p> <p>25 and analysis not to issue that permit. Is that what</p>	<p style="text-align: right;">Page 124</p> <p>1 the issuance of any lighting permit under MGO Section</p> <p>2 10.085 does not change the city's position that the use</p> <p>3 of the facility under the master plan is limited to team</p> <p>4 practices, physical education classes." See that?</p> <p>5 A. Uh-huh, yes.</p> <p>6 Q. As of February 27, in Exhibit 6, your position</p> <p>7 was that the contents of the master plan did not</p> <p>8 themselves impact or prohibit the issuance of the</p> <p>9 Edgewood permit; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And that was no longer your position after</p> <p>12 March 1; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And in preparation of the February 27, 2019</p> <p>15 letter, you had reviewed the master plan; correct?</p> <p>16 A. Yeah. Yes, I would say the letter itself</p> <p>17 implies, because I'm referencing a section, that I did</p> <p>18 review the master plan, yes.</p> <p>19 Q. And after March 1, what caused you to go back</p> <p>20 and re-evaluate the position that you set forth on</p> <p>21 February 27?</p> <p>22 A. My discussions with George Hank in Section</p> <p>23 10.085.</p> <p>24 Q. Okay. And which section under 10.085 are you</p> <p>25 referring to?</p>
<p style="text-align: right;">Page 123</p> <p>1 you're saying?</p> <p>2 A. No.</p> <p>3 Q. It was important?</p> <p>4 A. Yes.</p> <p>5 Q. So let's go back to Exhibit 7 and find 3.8 on</p> <p>6 page 42, which I believe is page 60 of 228 on 7.</p> <p>7 So what from this page, what from 3.8, the</p> <p>8 Open Space Plan, was material for you in the decision to</p> <p>9 withhold the light permit from Edgewood?</p> <p>10 A. What was material would be the lack of words,</p> <p>11 information in the Open Space Plan that referenced an</p> <p>12 interest to light the athletic field.</p> <p>13 Q. So the absence of language regarding lighting</p> <p>14 in 3.8 was what was material to you after March 1. Is</p> <p>15 that what you're saying?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And before March 1, on February 27, you</p> <p>18 were focused instead on the Open Spaces section Item No.</p> <p>19 1, the description of the athletic field; is that</p> <p>20 correct?</p> <p>21 A. Open spaces section, page 42, Section 3.8,</p> <p>22 yeah. Item 1, which was -- Item 1 is identified on the</p> <p>23 map and referenced in page 42, yes.</p> <p>24 Q. And then your last paragraph on Exhibit 6,</p> <p>25 says, "The purpose of this letter is to inform you that</p>	<p style="text-align: right;">Page 125</p> <p>1 A. The Statement of Purpose we discussed earlier.</p> <p>2 Let me see if I can find --</p> <p>3 Q. The two provisions you pointed to me before?</p> <p>4 A. Yes, sir. Yes.</p> <p>5 Q. Okay. Between you and Mr. Hank, who initiated</p> <p>6 that re-evaluation?</p> <p>7 A. I don't recall.</p> <p>8 Q. In light of the fact that you had set forth</p> <p>9 the position on February 27th, was there any</p> <p>10 communication you received from outside of your</p> <p>11 department from any source that caused or contributed to</p> <p>12 your decision to re-evaluate your position?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Why did you re-evaluate your position?</p> <p>15 A. Mr. Hank, my supervisor, and I expressed -- he</p> <p>16 came to me, from what I recall, and he was greatly</p> <p>17 concerned that the -- that letting the lighting plan be</p> <p>18 issued, the installation of the lights and the intent of</p> <p>19 uses described in the Edgewood families would create an</p> <p>20 unfavorable legal situation for the city in regard to</p> <p>21 the master plan conflict with master plan allowances for</p> <p>22 use of the facility.</p> <p>23 Q. So why did that warrant re-evaluating your</p> <p>24 position from February 27? You had already stated in</p> <p>25 this letter that the Open Space Plan, the allowances</p>



<p style="text-align: right;">Page 126</p> <p>1 don't impact the issuance of the permit; correct?</p> <p>2 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>3 You can answer.</p> <p>4 A. I don't -- would you -- I don't understand</p> <p>5 that question. Could you ask me that again?</p> <p>6 Q. So you're saying that George Hank came to you</p> <p>7 and said, hey, Section 3.8 in the limitation on use of</p> <p>8 that athletic field creates a problem if we issue the</p> <p>9 permit. Is that your testimony today?</p> <p>10 A. No, I wouldn't say it that way.</p> <p>11 Q. How would you say it?</p> <p>12 A. I would say that -- this is what I recall from</p> <p>13 our conversation was Mr. Hank conferred with me that</p> <p>14 Edgewood had indicated an intent to use the lights for</p> <p>15 the purpose of games and which was -- and I'm trying to</p> <p>16 remember exactly like how this went down.</p> <p>17 And that, you know, my authority like sort of</p> <p>18 starts and stops with the zoning code here, and George</p> <p>19 Hank is overarching.</p> <p>20 So he's the one that oversees the building</p> <p>21 permitting and that side of things.</p> <p>22 So he was the one who wanted to stop this in</p> <p>23 its tracks regardless of what I thought, because of the</p> <p>24 -- well, he's not like that, he wouldn't be regardless</p> <p>25 of what I thought, but it was -- his position was for us</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. So, again, from just reading the first</p> <p>2 paragraph, I understood your analysis to be that if the</p> <p>3 plans, i.e., Edgewood's lighting application, complies</p> <p>4 with 10.085, those electrical permits will be issued; is</p> <p>5 that fair?</p> <p>6 A. That's what it -- it says those plans will be</p> <p>7 reviewed for compliance and if the plans comply,</p> <p>8 electrical permits will be issued when requested.</p> <p>9 Uh-huh, yes.</p> <p>10 Q. Okay. But your testimony today is George Hank</p> <p>11 believed there would be legal trouble if those permits</p> <p>12 issued consistent with the analysis in your Exhibit 6;</p> <p>13 is that right?</p> <p>14 A. I think George Hank used an abundance of</p> <p>15 caution in -- and his ability as outlined in 10.085 to</p> <p>16 withhold the permit. That's how I would characterize</p> <p>17 it.</p> <p>18 Q. And you, in working with John Strange on</p> <p>19 February 27 and before to formulate the position in</p> <p>20 Exhibit 6, when you signed your name to this letter, you</p> <p>21 believed that was a correct and proper interpretation of</p> <p>22 the rights and responsibilities of your department in</p> <p>23 this matter; is that right?</p> <p>24 A. No, I believe that's my signature on my letter</p> <p>25 and that would be under the rights and responsibilities</p>
<p style="text-align: right;">Page 127</p> <p>1 to release the permit, allow the lights to be built</p> <p>2 could be problematic for us, particularly if Edgewood</p> <p>3 fell through on their intent as notified, as described</p> <p>4 in the letter to the Edgewood families to use that for</p> <p>5 athletic contests.</p> <p>6 Q. So you had already analyzed the master plan</p> <p>7 and determined that the master plan could -- the master</p> <p>8 plan was not inconsistent with the issuance of the</p> <p>9 requested permit; correct?</p> <p>10 MS. ZYLSTRA: Object to form. You can answer.</p> <p>11 Q. In Exhibit 6?</p> <p>12 A. Yeah, I wouldn't -- at the time, I don't think</p> <p>13 I thought that we could deny the request. Okay. I was</p> <p>14 -- that was my position at the time, that I recall.</p> <p>15 And I recall conferring with Attorney Strange</p> <p>16 on this, on navigating this prickly matter. And that</p> <p>17 was what I recalled was our initial position which</p> <p>18 resulted in the letter. I mean, those are my words,</p> <p>19 so --</p> <p>20 Q. So Exhibit 6 was drafted in consultation with</p> <p>21 Mr. Strange?</p> <p>22 MS. ZYLSTRA: Same stipulation?</p> <p>23 MR. INGRISANO: Yes.</p> <p>24 A. Yeah, he was involved in the -- yeah, the --</p> <p>25 this, uh-huh.</p>	<p style="text-align: right;">Page 129</p> <p>1 of me, not the department as a whole.</p> <p>2 Q. And as zoning administrator?</p> <p>3 A. Correct.</p> <p>4 Q. Got it. But you issued this letter in your</p> <p>5 official capacity as zoning administrator believing that</p> <p>6 this was the correct and proper handling of that</p> <p>7 lighting application; is that right?</p> <p>8 MS. ZYLSTRA: Object to form. You can answer.</p> <p>9 A. Yes.</p> <p>10 Q. And the analysis that you and Mr. Strange had</p> <p>11 undertaken together, on February 27th and before, was</p> <p>12 not a defective or deficient analysis in your opinion;</p> <p>13 is that fair?</p> <p>14 MS. ZYLSTRA: Same stipulation?</p> <p>15 MR. INGRISANO: Yes.</p> <p>16 MS. ZYLSTRA: And I'll object to form.</p> <p>17 A. I think we found -- when we spent some more</p> <p>18 time with it, the issue, we came to an -- I would say a</p> <p>19 more complete decision in regard to that matter.</p> <p>20 And it may be an advanced decision from my --</p> <p>21 our initial position we had come to on February 27th,</p> <p>22 all the while, we're trying to help this matter along,</p> <p>23 okay. If that makes sense.</p> <p>24 Like we are attempting to further the question</p> <p>25 asked which has potential processes.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q. Sure. When you say "we," you and Mr. Strange 2 and Mr. Hank were attempting to facilitate and move this 3 process along; is that right? 4 A. Yes. And I think it would be fair to say 5 there were probably other interested parties that were 6 curious. Nathan Wautier, for example. 7 Q. Curious like how? 8 A. The matter of improving the field, the open 9 space area. There were conversations that were 10 occurring that were discussing paths, alternatives, 11 methods, clarifications of things. 12 And it was a user of our time. It was 13 something that we spent quite a bit of time during this 14 period working on. 15 Q. Sure. And your meetings with Mr. Strange in 16 formulating Exhibit 6, did you meet with him in person, 17 phone calls, emails, any combination of those three? 18 MS. ZYLSTRA: Same stipulation? 19 MR. INGRISANO: Yes. 20 A. Probably all three. 21 Q. And those would have occurred between the 22 timeframe of February 22nd and February 27th; is that 23 right? 24 A. After the February 27th, I mean, there were 25 conversations, yeah. There was --</p>	<p style="text-align: right;">Page 132</p> <p>1 requests from the landowner; is that right? 2 MS. ZYLSTRA: Objection to form. You can 3 answer. 4 A. Can you -- this is a question -- can you ask 5 it again, please? 6 Q. I'll just withdraw that question. 7 A. All right. 8 Q. So your postmarked one formulation of the 9 grounds and the reasons to withhold the permit were the 10 lighting deficiencies in the master plan as you saw them 11 by themselves sufficient to withhold the permit even if 12 the open spaces had been more broadly identified? 13 MS. ZYLSTRA: Objection. Form. You can 14 answer. 15 A. That's a pretty wild hypothetical and it 16 wasn't -- I wasn't the one that withheld the permit. 17 George Hank was. 18 Q. Sure. I meant, again, the withholding of the 19 permit that occurred, the rationales that were -- you 20 know, the justifications for that. 21 I'm just trying to understand whether -- I'm 22 just trying to figure out what kind of amendment would 23 have cured this problem, right? 24 A. Yes. 25 Q. And I had heard a lot about the 3.8 issue from</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. I'm asking specifically about your dealings 2 with Mr. Strange in formulating and creating Exhibit 6. 3 A. Oh, okay. 4 Q. All right? 5 A. Yes. 6 Q. Those meetings would have occurred between 7 February 22nd and February 27th, right? 8 A. I believe so, yes. 9 Q. You didn't have advanced notice that the 10 lighting application was going to be filed on February 11 22nd; is that right? 12 A. We did not. I don't recall. We might have 13 heard about it, but I don't recall. 14 Q. Does the tendency of a master plan amendment 15 that may or may not get approved impact a landowner's 16 rights to have other permits and land use requests 17 considered under the then existing either ordinances or 18 master plan? 19 MS. ZYLSTRA: Objection. Form. You can 20 answer. 21 A. No. 22 Q. So the pending amendment request, which I 23 think you said was not pursued for reasons you don't 24 understand or know, that didn't foreclose any, what you 25 might argue, would be any contrary or contradictory</p>	<p style="text-align: right;">Page 133</p> <p>1 the other witnesses. 2 So was it your understanding based on the 3 reasoning for the withholding of the permit had 3.8 been 4 amended to broaden the use of the field such that night 5 games would have been deemed a permissible use, would 6 the light permits still have been denied because of the 7 other problems with the nonspecificity of the 8 description of lighting in the master plan could be 9 identified? 10 MS. ZYLSTRA: Objection. Form. You can 11 answer. 12 A. So that's kind of an incomplete hypothetical. 13 Because if the master plan, Section 3.8, open space, 14 said night games could be played, it would imply that 15 light would be necessary, like you can't do it without. 16 So there would be words that related to more 17 than just night games. They would talk to the lights 18 and figure out whatever those words may read, so it 19 would be clear and not ambiguous. 20 Q. If it just said -- would an amendment of 3.8 21 that said athletic field to be used for games, 22 practices, and other recreational activities of the 23 Edgewood community, would you have required more and 24 required additional amendments to descriptions of 25 lighting in the master plan?</p>

<p style="text-align: right;">Page 134</p> <p>1 MS. ZYLSTRA: Objection. Form.</p> <p>2 A. I think to be complete with that I would look</p> <p>3 at the Campus-Institutional District and knowing -- I'll</p> <p>4 just say knowing the historical sensitivity related to</p> <p>5 this matter, and that is a thing that I know, we would</p> <p>6 expect that any alteration approved that would use the</p> <p>7 word or those words that related to the playing of games</p> <p>8 or sports on there would have detail equal that related</p> <p>9 to allowances for lighting.</p> <p>10 It would not be without a complete circle,</p> <p>11 like similar to the way lighting is referenced in other</p> <p>12 aspects of the master plan related to perimeter</p> <p>13 buildings and the light poles on the parking lot.</p> <p>14 Q. Got it. So when the city said, hey, you have</p> <p>15 to amend your master plan in order for us to release a</p> <p>16 light permit, the amendment would have to have</p> <p>17 sufficiently covered not just the use of the football</p> <p>18 field, it would have had to address the lighted use of</p> <p>19 the football field; is that right?</p> <p>20 MS. ZYLSTRA: Object to form. You can answer.</p> <p>21 A. Yeah, I believe that would be true. I believe</p> <p>22 you would have a very complete picture in the master</p> <p>23 plan in regard to that use and improvement.</p> <p>24 Q. And do you know that that level of detail and</p> <p>25 expectation was communicated to Edgewood after March 1?</p>	<p style="text-align: right;">Page 136</p> <p>1 recall -- I don't recall specifically sharing that</p> <p>2 information, but it may be in that letter.</p> <p>3 Q. So your review of the master plan with a fine</p> <p>4 toothed comb in your discussions with Mr. Hank and</p> <p>5 Strange in that regard, and your conclusions that the</p> <p>6 master plan provided grounds to withhold the permit, you</p> <p>7 actually came to believe that was the correct analysis;</p> <p>8 correct?</p> <p>9 A. To withhold the permit?</p> <p>10 Q. Yeah, to withhold the permit and that the</p> <p>11 grounds that you cited from the Exhibit 7, the master</p> <p>12 plan.</p> <p>13 A. Oh.</p> <p>14 Q. The grounds that you cited, the provisions you</p> <p>15 cited that provided the justification, you came to</p> <p>16 believe after March 1 that that was the correct</p> <p>17 interpretation and analysis of the issue, is that true,</p> <p>18 or were you just doing this all to appease Mr. Hank?</p> <p>19 A. I wasn't doing it to appease Mr. Hank. We</p> <p>20 tend to work together and collaboratory, as a</p> <p>21 collaboration.</p> <p>22 Our interest was getting this right, being</p> <p>23 correct, making sure that we were not going to be making</p> <p>24 a mistake that could have a significant impact.</p> <p>25 Q. Is part of advancing -- was issuing Edgewood</p>
<p style="text-align: right;">Page 135</p> <p>1 Was the nature and scope of the amendment</p> <p>2 communicated to Edgewood that would have met that</p> <p>3 expectation?</p> <p>4 A. I would say Edgewood was on notice, if I</p> <p>5 could -- and I don't know if that's the right term --</p> <p>6 from back in December of 2018 when they submitted their</p> <p>7 alteration about the level of detail necessary.</p> <p>8 So it would not come as a surprise, because we</p> <p>9 had meetings with Brian Munson, Mike Elliot, and</p> <p>10 explained to them the level of specificity necessary for</p> <p>11 their ask to be complete and anticipate an outcome they</p> <p>12 might be looking to get.</p> <p>13 Q. And lawyers love to fight about notice, they</p> <p>14 can fight about notice all day long. I really didn't</p> <p>15 ask about notice.</p> <p>16 What I asked was did the city communicate with</p> <p>17 particular emphasis on this issue of the lighting</p> <p>18 application. Did you guys tell Edgewood, hey, what's</p> <p>19 holding up your permit is the master plan which needs to</p> <p>20 be amended, not just permit games but also needs to</p> <p>21 address the lighting deficiencies that we're identifying</p> <p>22 here?</p> <p>23 A. I know that there was a communication between</p> <p>24 John Strange and Nathan Wautier that came out in March,</p> <p>25 middle March. It may have been in there. I don't</p>	<p style="text-align: right;">Page 137</p> <p>1 notices, official notices for hosting games on the</p> <p>2 field, was that part of an effort to advance and resolve</p> <p>3 this issue, was that viewed as being a productive use of</p> <p>4 the city's time?</p> <p>5 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>6 You can answer.</p> <p>7 A. Getting resolution to what the city believes</p> <p>8 is a violation is a productive use of our time. And</p> <p>9 issuing an official notice, which is basically like a</p> <p>10 warning, can both sort of compel projects along, but it</p> <p>11 also creates opportunities for appeal, which would</p> <p>12 further things along.</p> <p>13 Q. Sure. Were you consulted in part of any -- or</p> <p>14 part of any group decisionmaking on whether to issue</p> <p>15 official notices for Edgewood's hosting games in March</p> <p>16 and April of 2019?</p> <p>17 A. Yes.</p> <p>18 Q. And what was your position as to whether those</p> <p>19 notices should issue?</p> <p>20 A. Well, I mean, let's just step back. I mean,</p> <p>21 first, it was -- it would have been receiving a</p> <p>22 complaint and following up with inspections.</p> <p>23 And so there was no plan ahead of time. There</p> <p>24 was response to complaints that resulted in inspections</p> <p>25 that then resulted in the issuance of official notices</p>

<p style="text-align: right;">Page 138</p> <p>1 of violation.</p> <p>2 Q. Step back to Exhibit 3 for a second. That was</p> <p>3 the Edgewood site verification form. Exhibit 3.</p> <p>4 A. Okay, yes.</p> <p>5 Q. You've got that in front of you.</p> <p>6 Let's assume for a second that there was no</p> <p>7 master plan issue, right, there was no --</p> <p>8 A. Is there a master plan in place or is there</p> <p>9 not?</p> <p>10 Q. Let's just say there is no master plan at all.</p> <p>11 A. Okay, okay. Sure.</p> <p>12 Q. And what would routine procedure from your</p> <p>13 experience after Christina Thiele approves her workflow</p> <p>14 March 1, what timeframe could Edgewood have reasonably</p> <p>15 expected its permit, what's the turnaround time there?</p> <p>16 A. It varies -- oh, turnaround. I mean, the</p> <p>17 permit could be issued whenever. The turnaround is</p> <p>18 really at the timeline of the contractor. Projects like</p> <p>19 this -- you want me to elaborate?</p> <p>20 Q. So you're saying at any time?</p> <p>21 A. Yeah.</p> <p>22 Q. So, in theory, on March 1, Christina checks</p> <p>23 the approved box, again assuming there is no master</p> <p>24 plan, master plan issue or controversy, Christina checks</p> <p>25 the box for approved on the zoning review, the</p>	<p style="text-align: right;">Page 140</p> <p>1 A. I don't believe so. This situation you</p> <p>2 describe, though, implies like it's set up for that use,</p> <p>3 like, you know, right?</p> <p>4 Q. Well, if you have a -- well, okay.</p> <p>5 If a school that's zoned Campus-Institutional</p> <p>6 District has a permissible use, there is nothing in the</p> <p>7 ordinances that would differentiate between the use of</p> <p>8 that -- that permissible use in the daytime versus the</p> <p>9 nighttime; is that fair?</p> <p>10 MS. ZYLSTRA: Objection. Form. You can</p> <p>11 answer.</p> <p>12 A. Yeah, I believe that's true.</p> <p>13 Q. I'll ask you to take a look at Exhibit 5. Let</p> <p>14 me grab that for you. I think I've got that right in</p> <p>15 front of me.</p> <p>16 Are you familiar with that document, sir?</p> <p>17 A. Yes.</p> <p>18 Q. That's a cover letter to a permit</p> <p>19 application -- an alternative application.</p> <p>20 The cover letter is from Attorney Wautier;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And what's the date of that letter?</p> <p>24 A. September 30, 2019.</p> <p>25 Q. And do you recall receiving that light</p>
<p style="text-align: right;">Page 139</p> <p>1 contractor sees that I assume on the website?</p> <p>2 A. I'm not exactly sure. I think, if I recall</p> <p>3 correctly, some of these permits are sort of like,</p> <p>4 almost like electronic approval.</p> <p>5 Q. Yeah.</p> <p>6 A. So this is a website. It sends a link out.</p> <p>7 It's posted out public and folks that are applicants.</p> <p>8 Jennifer Luhman would have received an email</p> <p>9 and would have told her what to do or what the status</p> <p>10 is. And then she -- there typically would be a permit</p> <p>11 associated with this that could be issued at the</p> <p>12 contractor's leisure.</p> <p>13 Q. Same day, March 1?</p> <p>14 A. In theory, yeah, could possibly be if it's</p> <p>15 ready.</p> <p>16 Q. Under the city's interpretation of Edgewood's</p> <p>17 Master Plan, Edgewood was entitled to use its field for</p> <p>18 team practices; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Does anything in Madison's zoning code</p> <p>21 prohibit a school in the Campus-Institutional District</p> <p>22 that's zoned Campus-Institutional District from</p> <p>23 practicing on its property at night or using its</p> <p>24 property at night?</p> <p>25 MS. ZYLSTRA: Object to form. You can answer.</p>	<p style="text-align: right;">Page 141</p> <p>1 application?</p> <p>2 A. Gosh, I bet Nathan was very purposeful in</p> <p>3 making sure it arrived in my hands. But I feel like</p> <p>4 Nathan would have made sure I was there for this, but I</p> <p>5 don't recall.</p> <p>6 Q. Do you know if that permit ever issued?</p> <p>7 A. It was -- this was not -- this was not</p> <p>8 approved, no.</p> <p>9 Q. And why not?</p> <p>10 A. There is a document that covers this, the</p> <p>11 review for this. This is associated with a similar</p> <p>12 document to Exhibit 3. Do you -- is that in the record?</p> <p>13 Q. You know, there are a lot of documents. I'm</p> <p>14 just asking you based on your best knowledge and your</p> <p>15 best recollection at this point.</p> <p>16 A. Yes. It's partially exhibit -- I believe it's</p> <p>17 partially Exhibit 37. When I look at the date of the</p> <p>18 map here, it says 26-September-19, but it doesn't have</p> <p>19 the report of -- the report of the site planner.</p> <p>20 Q. Okay. And from the best of your recollection</p> <p>21 do you recall why that permit wasn't issued?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And what do you recall?</p> <p>24 A. From what I recall, it was not issued because</p> <p>25 the workflow, similar to Exhibit 3 page was under status</p>

<p style="text-align: right;">Page 142</p> <p>1 of -- I believe it's called reject, redraft, or  2 something like that.  3 And there is a zoning comment in there that  4 was written by me and it was processed by me. But I  5 need to see it, see the words. But it effectively says  6 obtain a master plan amendment to when, whatever. I  7 don't know the rest of the words.  8 Q. Got it. Ballpark, though, again, general idea  9 is that in your view the situation hadn't changed and to  10 grant that light permit would still require a master  11 plan; is that right?  12 A. At the time it was submitted, yes, that was  13 our position.  14 Q. Whether it was on February 22nd or September  15 30th; is that right?  16 A. Yes.  17 MS. ZYLSTRA: Object to form.  18 A. Yes.  19 Q. Exhibit 2, sir, this is a permit for Madison  20 Memorial that was issued in 2018. Are you familiar with  21 that document?  22 A. I am.  23 Q. And did your zoning department have anything  24 to do or review with that document to the best of your  25 recollection?</p>	<p style="text-align: right;">Page 144</p> <p>1 specifications of 10.085; is that right?  2 A. That's correct.  3 Q. So in your professional experience assessing  4 the Madison Memorial lighting application and the  5 Edgewood February 22, '19 lighting application, the only  6 distinction in the analysis between those two  7 applications is the existence of Edgewood's Master Plan;  8 is that right?  9 MS. ZYLSTRA: Objection. Form. Misstates  10 testimony. You can answer.  11 A. No, I -- I mean, it's much more than that.  12 It's what's in the master plan, also. I believe you  13 have a use question, also.  14 Q. Existence and content of the master plan?  15 A. Uh-huh, yes.  16 MS. ZYLSTRA: Objection. Form. Go ahead.  17 A. Yes.  18 Q. So if Edgewood had elected not to adopt a  19 master plan in 2014, and its lighting application in  20 February of 2019 was just done, same as Memorial as a  21 Campus-Institutional District, they would have been  22 analyzed under the exact same standards; is that right?  23 MS. ZYLSTRA: Object to form. You can answer.  24 A. Yes.  25 Q. And you're not aware of any reason why the</p>
<p style="text-align: right;">Page 143</p> <p>1 A. We did.  2 Q. And what review was performed?  3 MS. ZYLSTRA: Object to form. You can answer.  4 A. On page 3, you will find the site plan  5 verification, and our office processed this request  6 similar to -- well, it was, I guess, similar to Exhibit  7 3. Similar, being that it was a Campus-Institutional  8 District and it was a lighting plan permit. But it was  9 also different.  10 Q. Different how?  11 A. The Madison Metropolitan School District  12 property that this is proposed on -- commonly it's the  13 Memorial High School, but Mansfield, I think, is how  14 it's referred to -- is zoned Campus-Institutional  15 District without a master plan.  16 And the lighting on the football and baseball  17 fields pre-existed and was being modified with this  18 permit.  19 Q. Sure. Whether the lighting was pre-existing  20 or not it still had to comply with technical  21 specifications of 10.085; correct?  22 A. Yes.  23 Q. So you can't -- just because its lighting is  24 existent already and is being upgraded or replaced it  25 doesn't give you carte blanche to exceed the technical</p>	<p style="text-align: right;">Page 145</p> <p>1 Edgewood Master Plan -- sorry, the Edgewood lighting  2 application in that circumstance would have been denied?  3 A. I am not.  4 Q. So it's fair to say that the existence and  5 content of the master plan, as interpreted by you and  6 Mr. Strange and Mr. Hank, was the sole reason that  7 Edgewood's Master Plan -- sorry, that Edgewood's  8 lighting application was not granted?  9 MS. ZYLSTRA: Object to form. You can answer.  10 A. So, no. I mean, I believe that we are in  11 charge with interpreting this, but the city council  12 adopted this master plan that had these words in it.  13 Edgewood proposed these words in good faith.  14 These words are relied upon by people, whoever they may  15 be.  16 The choice to have a master plan, which was  17 Edgewood's, had its benefits and its restrictions and  18 they chose it.  19 Q. But, again, it's the master plan, its contents  20 and how you interpreted that was the difference between  21 issuance and denial; is that right?  22 MS. ZYLSTRA: Object to form. You can answer.  23 A. Yes, I believe so. I think I understand your  24 question.  25 Q. You mentioned that Edgewood proposed all of</p>



<p style="text-align: right;">Page 146</p> <p>1 the terms of its master plan in good faith.</p> <p>2 As you sit here today are you aware of any</p> <p>3 statements by Edgewood that would indicate that they</p> <p>4 intentionally, knowingly, wanted to restrict the use of</p> <p>5 their field into -- yeah, to restrict the use of their</p> <p>6 field?</p> <p>7 A. This is tricky, because -- this question is</p> <p>8 tricky, because it's relying on my memory of the 2014</p> <p>9 process.</p> <p>10 And I did attend a few meetings about this,</p> <p>11 and I recall there were -- there were items of -- items</p> <p>12 that lacked resolution that Edgewood wanted. And I</p> <p>13 recall basically affected it like a no-change on the</p> <p>14 athletic field being a quick pass to move onto the</p> <p>15 things that were contentious.</p> <p>16 Like, this is okay, this is taken care of,</p> <p>17 move on to Edgedome, move on to the more controversial</p> <p>18 matters. And that was like a draft plan that Potter</p> <p>19 Lawson had shared with us.</p> <p>20 I believe there was a meeting that Tim Parks</p> <p>21 and I attended where we were, I recall, being asked</p> <p>22 because they were getting to the finalization of their</p> <p>23 master plan for submission and everyone was interested</p> <p>24 in a positive outcome to the extent that it would be</p> <p>25 possible.</p>	<p style="text-align: right;">Page 148</p> <p>1 an, okay, we're good, let's talk about the other things.</p> <p>2 And so like it was a touch-and-go is what I recall.</p> <p>3 And I don't -- beyond that, I can't tell you</p> <p>4 that anyone -- I can't even tell you who was even</p> <p>5 necessarily the people who said that, but I recall it</p> <p>6 was a thoughtful thing because I had dealt with it in</p> <p>7 the past as a controversial matter.</p> <p>8 Q. I'm trying to remember your testimony from</p> <p>9 earlier today, Mr. Tucker, about what, if any,</p> <p>10 involvement you had in the creation of the</p> <p>11 Campus-Institutional District zoning ordinance.</p> <p>12 What role, what involvement, did you have in</p> <p>13 the creation of that code provision?</p> <p>14 A. I was probably one of two or three people that</p> <p>15 have the most knowledge about the creation and the</p> <p>16 evolution discussions of the district. I attended all</p> <p>17 the meetings. I was there from inception.</p> <p>18 Q. And who would the other folks be?</p> <p>19 A. So we had a consultant that we had hired out</p> <p>20 of Minneapolis, and the woman's name was Suzanne Reece,</p> <p>21 that was a principal code drafter.</p> <p>22 She and I attended listening sessions. I</p> <p>23 think we probably had -- I don't know how many listening</p> <p>24 sessions we had. 50 listening sessions, maybe, with</p> <p>25 interested people prior -- this was back in 2007, prior</p>
<p style="text-align: right;">Page 147</p> <p>1 So this issue was resolved and other issues</p> <p>2 were the focus of the problem. And that was</p> <p>3 acknowledged.</p> <p>4 Q. So the issue was resolved. The issue being</p> <p>5 lights on the field?</p> <p>6 A. The field, its usage -- a continuation of its</p> <p>7 usage dating back to -- I think it was '96 was the last</p> <p>8 time we touched it with the words -- or the words came</p> <p>9 up again about team practices and gym class or whatever</p> <p>10 were used at the time.</p> <p>11 It was okay, this is not -- there is no</p> <p>12 change, this is recognizing no change, move on to the</p> <p>13 next -- the next controversial matters and work through</p> <p>14 them. And there were plenty.</p> <p>15 Q. Sure. And you mentioned this was acknowledged</p> <p>16 by Edgewood. What are you saying was acknowledged and</p> <p>17 how was it acknowledged?</p> <p>18 A. I can't say that I recall it being</p> <p>19 acknowledged. I recall this being an issue that the</p> <p>20 neighborhood in particular, I recall, because there were</p> <p>21 neighborhood people there and -- you know, Counsellor,</p> <p>22 I'm going back to 2014 here with this, so if you just</p> <p>23 give me a break on this.</p> <p>24 But I remember this being a thing that was --</p> <p>25 was a -- you have tension about things and this was just</p>	<p style="text-align: right;">Page 149</p> <p>1 to starting the drafting of the new zoning code.</p> <p>2 We were meeting with interested parties, and</p> <p>3 Edgewood, UW, and Madison College were one of those</p> <p>4 meetings.</p> <p>5 The staff team included city planner, now</p> <p>6 planning director, Heather Stouder. The alderperson for</p> <p>7 the district was involved in some of the discussions for</p> <p>8 -- particularly for Edgewood, and the alderperson for</p> <p>9 the district around UW was also involved. I believe</p> <p>10 that was Shiva Bidar, and was the UW alder principally.</p> <p>11 And then Susan Ellingson was the alderperson around</p> <p>12 Edgewood.</p> <p>13 Former Alderperson Julia Kerr was involved.</p> <p>14 Your question was who was involved, right?</p> <p>15 Q. Yeah.</p> <p>16 A. Okay. So obviously Maggie Balistreri-Clarke</p> <p>17 was one of the prominent persons. Gary Brown from the</p> <p>18 University of Wisconsin, also prominent. And a guy</p> <p>19 named -- jeez, I forget his name at Madison College, but</p> <p>20 I don't know, whatever. His name is Mike something or</p> <p>21 something like that. Not really memorable.</p> <p>22 There were neighbors of Edgewood because of</p> <p>23 history that were interested and involved in</p> <p>24 participating. I recall Jon Standrich being involved.</p> <p>25 He was past president of Vilas.</p>



<p style="text-align: right;">Page 150</p> <p>1 There were any number of neighbors in the</p> <p>2 Dudgeon-Monroe that were involved. The mayor probably</p> <p>3 was apprised. I don't think the mayor really had a lot</p> <p>4 to do with it, but the mayor was aware. Dave Cieslewicz</p> <p>5 initially --</p> <p>6 THE REPORTER: Sorry, what?</p> <p>7 THE WITNESS: Cieslewicz, C-i-e-s-l-e-w-i-c-z.</p> <p>8 Mayor Soglin was aware. So it was a pretty wide swath</p> <p>9 of our community. It was really an important community</p> <p>10 decision, the writing of this district.</p> <p>11 Q. Sure. Of all the folks you mentioned could</p> <p>12 you make a distinction between people that were</p> <p>13 consulted and had input, or it was just the people that</p> <p>14 were actually putting pen to paper, rolling up their</p> <p>15 sleeves and doing kind of the drafting and</p> <p>16 decisionmaking?</p> <p>17 A. So, yeah, the staff that were doing a lot of</p> <p>18 drafting, you had Gary Brown and Marie Balistreri-Clarke</p> <p>19 or -- yeah, Marie or -- is that her name?</p> <p>20 MS. ZYLSTRA: Maggie.</p> <p>21 A. Maggie. Thank you. Who were heavily</p> <p>22 involved. And the consultant.</p> <p>23 We also had a 25 person zoning code rewrite</p> <p>24 advisory committee that was reviewing and overseeing</p> <p>25 drafts. That committee was comprised of a variety of</p>	<p style="text-align: right;">Page 152</p> <p>1 consistent with the other sections of the district, and</p> <p>2 then it evolved as feedback came through.</p> <p>3 So we pretty much -- the code is written</p> <p>4 custom.</p> <p>5 Q. Sure.</p> <p>6 MS. ZYLSTRA: Do you need another break?</p> <p>7 THE WITNESS: Yeah, that would be good.</p> <p>8 MR. INGRISANO: Okay. That works.</p> <p>9 (Recess)</p> <p>10 BY MR. INGRISANO:</p> <p>11 Q. Mr. Tucker, can you describe for me the</p> <p>12 distinction between a master plan in a</p> <p>13 Campus-Institutional District context and a master plan</p> <p>14 in a planned development, or PD, district context?</p> <p>15 A. The term "master plan" in a planned</p> <p>16 development context, I don't believe that exists. I</p> <p>17 would need to look at the ordinance to be sure, but it</p> <p>18 is not a thing.</p> <p>19 Q. Okay.</p> <p>20 A. Planned developments have general development</p> <p>21 plans which allow basic rights of use, bulk, which is</p> <p>22 sort of like building height, square footage, et cetera,</p> <p>23 general development plan.</p> <p>24 And then they have something called a</p> <p>25 "specific implementation plan," which is a high level of</p>
<p style="text-align: right;">Page 151</p> <p>1 people, alders, developer interests. Nathan Wautier</p> <p>2 attended those meetings.</p> <p>3 Q. Was he on committee or attended?</p> <p>4 A. Attended and provided feedback.</p> <p>5 Others citizens that served on other board</p> <p>6 committees and commissions. People that were volunteers</p> <p>7 that were neighborhood interests that were appointed by</p> <p>8 the mayor at the time. 25 person committee. Big</p> <p>9 committee, lots of opinions. Review drafts, provide</p> <p>10 commenting in regard to the evolution of the CI</p> <p>11 District.</p> <p>12 Q. Did the CI District start off -- you mentioned</p> <p>13 the consultant who was retained, Susan Reece. Had she</p> <p>14 helped other municipalities with other CI District</p> <p>15 ordinances?</p> <p>16 A. I'm not aware.</p> <p>17 Q. Do you know if the starting point of the</p> <p>18 Madison CI District ordinance was a template or past</p> <p>19 ordinance that was used somewhere else?</p> <p>20 A. I'm not aware.</p> <p>21 Q. So you don't know if it's something that has</p> <p>22 been replicated in a different city or its been cut from</p> <p>23 whole cloth?</p> <p>24 A. It could have been cribbed from other cities,</p> <p>25 but it was originally written and draft in form</p>	<p style="text-align: right;">Page 153</p> <p>1 detail for all aspects; building design, floor plans,</p> <p>2 site landscaping, parking, lighting, you name it.</p> <p>3 That's all it is.</p> <p>4 For a planned development, there is not a</p> <p>5 master plan. There is a general development plan and a</p> <p>6 specific implementation plan.</p> <p>7 Q. All right. Do you have a recollection of when</p> <p>8 Edgewood's Master Plan became effective so as to control</p> <p>9 its development of its property?</p> <p>10 A. Yes. On Exhibit 7, there is a date stamp on</p> <p>11 plans here. If I could find it, I will -- we</p> <p>12 established that as the effective date for the plan</p> <p>13 starting the tenure shot clock. 11/06/2015.</p> <p>14 Q. 11/06/2015, that establishes the 10-year kind</p> <p>15 of expiration period, correct?</p> <p>16 A. Yeah, I refer to it as a shot clock, but</p> <p>17 expiration period, yes.</p> <p>18 Q. But actually the contents of the master plan</p> <p>19 actually controlled it before that date as well, right?</p> <p>20 MS. ZYLSTRA: Objection. Form. You can</p> <p>21 answer.</p> <p>22 A. No, the master plan does not take effect until</p> <p>23 the sign-offs are completed and our -- the date where of</p> <p>24 the sign-off, which in this case is the 6th of November,</p> <p>25 2015.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. So you're saying the master plan was not 2 effective in 2014?</p> <p>3 A. It was not. It was approved and in the 4 process of sign-off. 5 (Exhibit 40 marked)</p> <p>6 Q. MR. INGRISANO: I'm handing you what's been 7 marked as Exhibit 40.</p> <p>8 Sir, do you recognize that document?</p> <p>9 A. I believe I do, yes. I believe this is the 10 approval letter issued by the City Planning office for 11 the Edgewood Campus Master Plan.</p> <p>12 Q. And that's dated April 22nd, 2014?</p> <p>13 A. Yes.</p> <p>14 Q. So the first paragraph says, "At its April 8, 15 2014 meeting, the Common Council approved a 16 Campus-Institutional District Master Plan for Edgewood 17 College, Edgewood High School and Edgewood Campus School 18 subject to the conditions that follow. These conditions 19 of approval shall be satisfied prior to the master plan 20 taking effect and the issuance of building permits for 21 any of the projects contained in the plan."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. So as I read it -- and you tell me if you 25 agree or disagree.</p>	<p style="text-align: right;">Page 156</p> <p>1 impact of the approved master plan, right?</p> <p>2 MS. ZYLSTRA: Object to form, foundation. You 3 can answer.</p> <p>4 A. You might be able to. Actually, you might be 5 able to because you have zoning that you are allowed to 6 work with until your master plan sign-off is complete.</p> <p>7 You're not in a limbo of no zoning. You would 8 be able to do things hypothetically.</p> <p>9 Q. Sure. Have you ever talked with Timothy Parks 10 about why they include that language that says these 11 conditions of approval shall be satisfied prior to the 12 issuance of building permits for any of the projects 13 contained in the plan?</p> <p>14 A. I don't recall talking to him about that 15 specific phrase, no.</p> <p>16 Q. UW has a master plan; correct?</p> <p>17 A. They did.</p> <p>18 Q. And do you have a recollection as to when that 19 master plan went into effect to govern its property?</p> <p>20 A. I would have to see it for sure, but for some 21 reason I'm recalling it was January 1 of 2019, I think.</p> <p>22 Their master plan actually has a date stamp 23 similar to this and they requested a letter. We 24 provided a letter that verified that effective date 25 start.</p>
<p style="text-align: right;">Page 155</p> <p>1 As I read that, yes, the conditions of 2 approval that are listed on this document have to be 3 satisfied prior to the master plan taking effect, but in 4 the interim there aren't going to be any building 5 permits that are going to be issued on the projects 6 contained on the plan; is that right?</p> <p>7 MS. ZYLSTRA: Object to form. You can answer.</p> <p>8 A. Yes, with the explanation that if they weren't 9 able to complete the sign-off of the master plan and 10 they wanted to do a project, they would be proceeding 11 outside of the master plan like as a conditional use, 12 for example. That's how that would be processed. Or as 13 potentially a permitted use under CI. It doesn't take 14 effect until.</p> <p>15 Q. "These conditions of approval shall be 16 satisfied prior to" -- dot-dot-dot -- "the issuance of 17 building permits for any of the projects contained in 18 the plan"; right?</p> <p>19 A. Correct.</p> <p>20 MS. ZYLSTRA: Object to form.</p> <p>21 Q. So if my master plan had -- a hypothetical 22 master plan had a project for a lighted field, my master 23 plan had been approved subject to some conditions, I 24 couldn't just defer, delay those conditions and draw a 25 new lighting application under the 10.085 and avoid the</p>	<p style="text-align: right;">Page 157</p> <p>1 (Exhibit 41 marked)</p> <p>2 Q. MR. INGRISANO: Sir, I'm handing you what's 3 been marked as Exhibit 41.</p> <p>4 Have you ever seen this document before? Look 5 to the last page of the document. You are cc'd on it.</p> <p>6 A. Yeah, it appears to be the Planning Division's 7 approval letter for the University of Wisconsin master 8 plan. I suspect I've seen it. That's fair.</p> <p>9 Q. So similar to Exhibit 40, the Planning 10 Division is apprising the applicant that the Common 11 Council has adopted the master plan; correct?</p> <p>12 A. Yes.</p> <p>13 Q. This letter is dated October 4, 2017?</p> <p>14 A. Correct.</p> <p>15 Q. If I can ask you to take a look at page 6 of 16 this document, Bates stamped "UW Madison-005459." 17 Down at the bottom in bold it says, "The 18 10-year effective period for this master plan shall not 19 take effect until all of the required revisions and 20 stipulations have been made/satisfied. No City-related 21 permits for projects in this CI District shall be issued 22 until the plan has been revised to address the comments 23 and conditions in this letter."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. Again, as with the Edgewood letter that we saw 2 in Exhibit 40, while the 10-year shot clock -- as you 3 described it -- doesn't start to tick, the approval 4 contained in this letter comes with a requirement that 5 permits not be issued until the plan has actually been 6 advised and addressed consistent with the letter; is 7 that right?</p> <p>8 MS. ZYLSTRA: Objection. Form.</p> <p>9 A. No, the words are different actually.</p> <p>10 Q. No, I was asking you about this letter, 11 Exhibit 41.</p> <p>12 A. Yeah, okay. I'm reading it.</p> <p>13 Q. "No City-related permits for projects in this 14 CI District shall be issued until the plan" -- meaning 15 the master plan that was just a notice of approval here 16 -- "has been revised to address the comments and 17 conditions in this letter."</p> <p>18 Did I read that correctly?</p> <p>19 A. You're reading it correctly.</p> <p>20 Q. So the approved master plan has the effect of 21 prohibiting any permits unless and until this document 22 gets revised to address the comments and conditions; 23 correct?</p> <p>24 MS. ZYLSTRA: Object to form, foundation. You 25 can answer.</p>	<p style="text-align: right;">Page 160</p> <p>1 they play games on the field?</p> <p>2 A. Okay. I became aware in October of 2018. I 3 forget the exact date. There was a meeting that 4 Edgewood hosted at their facility to talk about their 5 interest to modify the -- well, I'll just say to create 6 a stadium space was what their interest was, for 7 simplicity.</p> <p>8 And at that meeting they presented a 9 PowerPoint that indicated how the field was being used. 10 So Mike Elliot was running that meeting with Brian 11 Munson as his planning consultant, and at that meeting 12 was the first time I became aware of their usage as they 13 were representing it to the folks in attendance there. 14 And it included usage of the field for onsite games and 15 sports.</p> <p>16 Q. Got it. So it was Edgewood disclosing in the 17 PowerPoint the use of the field?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever had any observations of the 20 Edgewood field?</p> <p>21 A. I mean, any observations of the Edgewood 22 field. Yes, I have had observations of the Edgewood 23 field. I've been by it.</p> <p>24 Q. Sure. Have you ever seen activity on the 25 Edgewood field?</p>
<p style="text-align: right;">Page 159</p> <p>1 A. That's the way this letter reads, but I don't 2 agree with the position that we -- well, that we would 3 be prohibiting the University of Wisconsin for the very 4 few city-related permits that they pull, which are 5 almost none. They don't pull any permits.</p> <p>6 I don't think this locked them down, so to 7 speak. That's my term from the start at the 10-year 8 shot -- the 10-year lifespan of the master plan.</p> <p>9 I don't believe Mr. Parks' letter is 10 technically correct here. And I would probably -- if UW 11 approached me about that with the project, I would talk 12 with them about what they could do.</p> <p>13 Q. Again, you haven't talked to Mr. Parks about 14 the basis or rationale that he had in mind when he 15 drafted those words?</p> <p>16 A. No.</p> <p>17 Q. Sir, when did you personally become aware that 18 Edgewood was playing games on its field?</p> <p>19 A. Me, personally aware? Do you mean literally 20 me seeing it or what do you mean?</p> <p>21 Q. What I would like to understand is when either 22 you -- when did you first either personally observe 23 games being played on the field or receiving a report 24 from someone who says they observed games on the field, 25 or a statement or communication from Edgewood saying</p>	<p style="text-align: right;">Page 161</p> <p>1 A. I have seen activity on the field.</p> <p>2 Q. What do you recall that activity constituting?</p> <p>3 A. I have seen children practicing football or 4 practice, I'll call it. You know, gone by in late 5 summer, gone by on Monroe Street and seen what appeared 6 to be practices occurring.</p> <p>7 It appeared to be, at least from my glancing, 8 you know, there were multiple people doing multiple 9 things on the field in different areas on the same 10 field. So, it looked like a practice to me.</p> <p>11 Q. So, historically, beyond those observations of 12 practices, are you aware of ever in the history of your 13 life, are you aware of any other uses of Edgewood's 14 field that the school undertook other than practices?</p> <p>15 MS. ZYLSTRA: Objection. Form as to time -- 16 or vague as to time.</p> <p>17 Q. You went to Queen of Peace grade school, you 18 went to Van Hise after that, right?</p> <p>19 A. I did.</p> <p>20 Q. You went to what high school?</p> <p>21 A. West.</p> <p>22 Q. West. That's right. Any use of that field 23 throughout your life?</p> <p>24 A. I'm familiar with the use of the area where 25 the field is. I wouldn't really call it use of the</p>

<p style="text-align: right;">Page 162</p> <p>1 field, but the Edgefest community event that occurred,  2 occurred partially on an area of the athletic field.  3 Q. Anything else?  4 A. No, not that I'm aware of.  5 Q. Do you have any knowledge of how long Edgefest  6 ran, from what year to what year?  7 A. I don't. However, I know it ended not long  8 after I graduated in 1990, I believe. I don't think it  9 went on too much longer. I don't know when it ended. I  10 know it's not happening anymore. It wasn't happening  11 when I moved back to Madison in 2005.  12 Q. Understood. Again, I'm asking for your  13 recollection. I recognize it's a long time ago.  14 Do you have any recollection from the master  15 plan approval negotiation process, do you have any  16 recollection of Edgewood describing the current use of  17 its field -- then current use of its field during that  18 process?  19 A. By describing, do you mean by referencing it  20 in the draft plan or do you mean their own words?  21 Q. Their own words, whether it's in a writing  22 other than the master plan, a statement, oral.  23 A. I don't recall. I'm sorry.  24 Q. Do you recall during that process any  25 statements by Edgewood or its personnel about its</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Oh, sorry. Is it Schey?  2 A. Correct.  3 Q. Do you recognize that email exchange?  4 A. Yeah, I'm identified in it, so yes, I'm sure  5 it's mine.  6 Q. I suppose you get your email exchanges with a  7 lot of neighbors of not just Edgewood but other property  8 owners that are unhappy?  9 A. Yes, I do. This one was actually very  10 frustrating. I recall this.  11 Q. So I'm going to ask you to turn to -- well,  12 let me ask you this: What was frustrating about it?  13 A. Ms. Schey was asking me -- Ms. Schey, I felt  14 like she was reacting to a -- to a rumor, and it -- when  15 I investigate these things, I really don't feel -- I  16 feel -- I want to make sure that I'm not being used to  17 take an action that might be seen as sort of naggy or  18 harassment-y towards someone. And I just don't like it  19 when people set me up to -- I don't need to bother Mike  20 Elliot with this thing.  21 Like it was all, from my perspective up front,  22 I have to delicately call Mr. Elliot and talk to him  23 about a rumor, and I just don't like doing that.  24 Q. Sure. What was the particular rumor that you  25 recall with this exchange?</p>
<p style="text-align: right;">Page 163</p> <p>1 intended future use, describing its intended future use  2 of that field?  3 MS. ZYLSTRA: Prior to October 2018?  4 Q. During the master plan amendment process that  5 you described, do you recall any statements by Edgewood  6 describing its intended future use of its field?  7 A. So by that you mean by when they had submitted  8 a master plan for approval from the city, so 2014-ish,  9 right?  10 Q. During the process of negotiating, working  11 with your department on the master plan during the  12 approval process, that 2013-2014 timeframe.  13 A. Understood. I don't recall any focus,  14 frankly, on any change to the field.  15 Q. Beyond the change, though, any statements of  16 intent as to how they were going to be using that field  17 going forward?  18 A. I don't recall any focus, anything beyond what  19 I testified to earlier about, like, okay, touch and go,  20 no change, move on to controversial things.  21 (Exhibit 42 marked)  22 Q. MR. INGRISANO: I'm handing you what's been  23 marked as Exhibit 42. It's an email exchange between  24 you and Mr. Shawn Schey.  25 A. He's a she.</p>	<p style="text-align: right;">Page 165</p> <p>1 A. Ms. Schey had contacted me about allegedly  2 Edgewood using their lawn area for the parking of lots  3 and lots of cars and if they could do that and if it  4 would be possible.  5 It was a very weird question, frankly, that I  6 was posed here. I don't know.  7 Q. So in the email from Ms. Schey -- I'm on page  8 2, I'll call it kind of in the middle of the page where  9 it says January 12, 2017 at 7:19 p.m., right there in  10 the middle.  11 A. Uh-huh.  12 Q. She was telling you, as I read this just kind  13 of in the middle of her email:  14 "We were just informed that they" --  15 Edgewood -- "would like to add 35 night games to their  16 new track and field for football, soccer, track, and  17 lacrosse. They have stated the following" -- and then  18 she's quoting -- "By combining current hard surface  19 parking (261), new hard surface parking (70), Edgewood  20 Campus School parking (30), Edgewood College overflow  21 parking (200), and grass overflow parking (220) for a  22 total of 781 parking spots, the Edgewood campus is able  23 to handle all parking for all events onsite. Only  24 maximum football crowds would require parking areas  25 labeled as overflow. To clarify, they do not yet" --</p>

<p style="text-align: right;">Page 166</p> <p>1 the quote ends -- "To clarify, they do not yet have the  2 70 new hard surface parking spots mentioned above. They  3 also anticipate seven football games."  4 Do you see that?  5 A. Yeah.  6 Q. In the email above that, in your response, you  7 write:  8 "I could see us having little concern about  9 the seven home football games at the property, so long  10 as the parking does not rut up the lawn or kill the  11 grass or create an erosion/soil tracking problem. 35  12 events, that seems to be a stretch."  13 And then you go on to differentiate between  14 what you're talking about there for the Wisconsin Badger  15 home Football Saturdays, right?  16 A. Yes.  17 Q. So by this email from January of 2017, haven't  18 you received a report that Edgewood is playing games on  19 its field?  20 MS. ZYLSTRA: Object to form. You can answer.  21 A. No.  22 Q. The seven home games that you would have  23 little concern about don't reference Edgewood football  24 games; is that right?  25 MS. ZYLSTRA: Objection. Form.</p>	<p style="text-align: right;">Page 168</p> <p>1 I don't really follow high school football or whatever,  2 but they don't play there, I believe. I was under the  3 understanding that they play at like Verona or Middleton  4 or something like that.  5 So I'm not aware of this, the basis of this  6 being that they are having events. There is talk about  7 how they could have events and they park up for alumni  8 and for Football Saturdays, which we've, you know, said  9 it's beneath our notice.  10 Q. In 2017, had you or anyone, to your knowledge,  11 in your department interpreted the Edgewood Master Plan  12 as not permitting games on the field?  13 MS. ZYLSTRA: I'm sorry, can I hear that one  14 read back?  15 (Record read)  16 A. I don't recall that issue coming up. I don't  17 know what other -- other people in my department might  18 have received inquiries. So I don't recall that being a  19 matter that came up.  20 Q. Was, in 2015, an electrical permit issue  21 related to the athletic field; correct?  22 A. Yes.  23 Q. And were you familiar with that permit?  24 A. I have become familiar with that permit.  25 Q. Sure. Did you undertake any review of the</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Or do they?  2 A. I don't know what they are referencing. This  3 is a hypothetical that's being posed to me by Ms. Schey.  4 Her question to me is about parking on the  5 grass, and she references seven football games, but  6 she's asking me about parking on the grass.  7 So I actually checked with Engineering about  8 parking on the grass, can you do that from a civil  9 engineering perspective, like, I don't know the rules.  10 I was kind of like double checking.  11 I think the statement of this, that they are  12 going to have games or events is not the focus of this  13 question. They are not asking to -- her question to me  14 is not about that; it's about parking on the grass.  15 And for all I know, they're working out some  16 -- there is something in the works and they are talking  17 about parking on the grass.  18 Q. But in the context of the parking on the grass  19 issue, you received information that the context for  20 that parking on the grass is for Edgewood sporting  21 events occurring on its field, right?  22 MS. ZYLSTRA: Object to form, misstates facts.  23 You can answer.  24 A. I mean, they're talking about this, but my  25 understanding -- well, I mean, I don't really -- I mean,</p>	<p style="text-align: right;">Page 169</p> <p>1 electrical permit in light of the master plan when that  2 was first applied for?  3 A. No. The electrical permits -- this was a  4 permit for the installation of an underground conduit,  5 so it could be visually inspected by the inspector, were  6 not the permits that would come across our desk for that  7 kind of an improvement.  8 So, frankly, I wasn't aware that it was issued  9 until sometime after it had been issued and inspected,  10 fair to say year -- years, plural.  11 Q. Sure. So given your interpretation of the  12 master plan in March of 2019, applying that in 2015,  13 should that permit have issued?  14 MS. ZYLSTRA: Object to form. You can answer.  15 A. I believe that we -- you know, in a situation  16 similar to this, we might issue it in -- with sort of  17 caution, like a recommendation of caution.  18 Like all they were doing was installing  19 conduit for future wiring to be pulled through for  20 future light and sound improvements. They weren't -- it  21 wasn't enabling any use, it wasn't enabling any -- any  22 actual --  23 It's a very strange electrical permit, because  24 what it is is just looking it up at a tube to make sure  25 that when they cover it up that it's okay for them to</p>



<p style="text-align: right;">Page 170</p> <p>1 pull wire through.</p> <p>2 And we might -- you know, in hindsight sitting</p> <p>3 here today, we might put a clause in there like, you</p> <p>4 know, this is being put in at the owner's own risk; they</p> <p>5 may not be able to ever utilize it.</p> <p>6 You know, but installation of conduit is just</p> <p>7 not a thing that we spend time focusing on. It's a</p> <p>8 wise, advanced practice for people that have a potential</p> <p>9 future interest, and we want to help people with that so</p> <p>10 they don't have to tear up and redo things.</p> <p>11 Q. Sure. Are you aware that Edgewood installed a</p> <p>12 scoreboard around that same time?</p> <p>13 A. I don't know when the scoreboard got</p> <p>14 installed, but I'm aware that a new scoreboard was</p> <p>15 installed.</p> <p>16 Q. Given your interpretation of the master plan</p> <p>17 in March of 2019, did the Edgewood Master Plan prohibit</p> <p>18 the installation of that scoreboard?</p> <p>19 A. It did not.</p> <p>20 Q. And why is that?</p> <p>21 A. I -- I believe you could use a scoreboard as</p> <p>22 part of team practices and physical education classes.</p> <p>23 It's a device that could be -- probably a critical</p> <p>24 device if you're trying to teach someone a sport that</p> <p>25 involves things that are on scoreboards, like time.</p>	<p style="text-align: right;">Page 172</p> <p>1 And the master plan does say that the uses of</p> <p>2 that area are 14 practices and physical education</p> <p>3 classes.</p> <p>4 You know, we would use our -- we would have to</p> <p>5 see what potentially people would put forth to ask us,</p> <p>6 you know, for things that might happen on the field,</p> <p>7 whether we would deem them a violation or beneath our</p> <p>8 notice.</p> <p>9 Q. Got it. Mr. Hank kind of described the</p> <p>10 beneath our notice criteria in his deposition.</p> <p>11 Did you have any disagreements with how he</p> <p>12 characterized that discretion?</p> <p>13 A. I did not. I would agree with how he</p> <p>14 described it.</p> <p>15 Q. Sir, after becoming a Campus-Institutional</p> <p>16 District -- after becoming zoned as a</p> <p>17 Campus-Institutional District but before the effective</p> <p>18 date of its master plan, Edgewood had unfettered use of</p> <p>19 its athletic field as a sports and recreation facility;</p> <p>20 is that right?</p> <p>21 MS. ZYLSTRA: Object to form.</p> <p>22 A. I'm not that comfortable with those terms.</p> <p>23 But I would say the campus -- yeah, the words in the</p> <p>24 district applied up until the master plan was -- the</p> <p>25 signoff was completed and they effectively would have</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Sure. So if that improvement can be tied to</p> <p>2 at least one permitted use, here team practices, it</p> <p>3 would be consistent with the master plan; is that right?</p> <p>4 MS. ZYLSTRA: Objection. Form.</p> <p>5 A. Yeah, I think we would be considerate of that.</p> <p>6 I also think that there was an existing scoreboard. It</p> <p>7 was a replacement of a scoreboard, I believe. I believe</p> <p>8 it was a replacement of a scoreboard.</p> <p>9 Q. Okay.</p> <p>10 A. That's something that we would probably</p> <p>11 consider routine associated with team practices.</p> <p>12 I wouldn't -- we would not take a restrictive</p> <p>13 position to prohibit it, I believe. So when they want</p> <p>14 to pull the electrical permit for that, we would be</p> <p>15 happy to issue that.</p> <p>16 Q. Is it your position, sir, based on your</p> <p>17 interpretation of the Edgewood Master Plan, that any use</p> <p>18 of the property that is not a team practice or physical</p> <p>19 education class is a use incompatible with and</p> <p>20 prohibited by the Edgewood Master Plan?</p> <p>21 MS. ZYLSTRA: Object to form. You can answer.</p> <p>22 A. I guess, I think that -- and I mean, I have</p> <p>23 been part of the conversations about activities</p> <p>24 occurring on the field. I think implying use sort of</p> <p>25 gives it a standing.</p>	<p style="text-align: right;">Page 173</p> <p>1 what -- they could have what would be allowed under the</p> <p>2 district at that time, yes.</p> <p>3 Q. And after the expiration or termination of the</p> <p>4 master plan, Edgewood would again have that more</p> <p>5 expanded use and rights to its field; is that right?</p> <p>6 MS. ZYLSTRA: Objection. Form.</p> <p>7 A. It would revert back to the words that are in</p> <p>8 the ordinance, yes.</p> <p>9 Q. So permissible use -- so permissible use we</p> <p>10 talked about in (3)(b), right?</p> <p>11 MS. ZYLSTRA: Objection. Form.</p> <p>12 Q. Of the ordinance?</p> <p>13 MS. ZYLSTRA: Sorry, Counsel. Same objection.</p> <p>14 A. I just need to find the exhibit there. Here</p> <p>15 we go.</p> <p>16 Yeah, I believe so. I believe they would be</p> <p>17 operating under (3)(a) and (b).</p> <p>18 Q. And those identify the primary and secondary</p> <p>19 permitted uses for property that is zoned as</p> <p>20 Campus-Institutional District?</p> <p>21 A. Yes.</p> <p>22 Q. Are you aware of any support by members of the</p> <p>23 Common Council or the Plan Commission for the idea of</p> <p>24 Edgewood amending its master plan to prevent games,</p> <p>25 lights, and to build a stadium?</p>



<p style="text-align: right;">Page 174</p> <p>1 MS. ZYLSTRA: Object to form.</p> <p>2 A. I'm aware of -- I am aware of a few alders, I</p> <p>3 believe, who were supportive of them going through the</p> <p>4 process for obtaining approvals.</p> <p>5 I don't know if anyone was like, yeah,</p> <p>6 whatever you put up I'm good to go. But supportive of</p> <p>7 the go through the process, yes.</p> <p>8 Q. Given the divisiveness of this issue and your</p> <p>9 experience with it, right, your history, what you knew</p> <p>10 about the relations between the neighbors and the like,</p> <p>11 now, frankly, everything you've seen since, as you sit</p> <p>12 here today, Mr. Tucker, do you really think that</p> <p>13 Edgewood's attempt to amend its master plan, which would</p> <p>14 require Plan Commission approval, had a snowball's</p> <p>15 chance of getting passed in this matter?</p> <p>16 MS. ZYLSTRA: Objection. Form, foundation.</p> <p>17 You can answer.</p> <p>18 A. This is an opinion.</p> <p>19 Q. It is.</p> <p>20 A. And this is a hard hypothetical, because they</p> <p>21 never went down that path. Unfortunately, they never</p> <p>22 chose to proceed in a master plan amendment.</p> <p>23 However, our office was positively working</p> <p>24 with Edgewood to identify the ways in which the</p> <p>25 amendment could have been approved, and we also wrote</p>	<p style="text-align: right;">Page 176</p> <p>1 the way I have seen it work at least in almost all</p> <p>2 cases.</p> <p>3 Q. Sure.</p> <p>4 A. I'm a positive person. I have hope and faith</p> <p>5 in these things.</p> <p>6 Q. How many memos did you and your staff put</p> <p>7 together to recommend to either the Plan Commission or</p> <p>8 the Common Council if they could repeal the master plan?</p> <p>9 A. Hmm, memos. Gee, I think there was --</p> <p>10 Q. Staff reports, memos, however you want to</p> <p>11 characterize them.</p> <p>12 A. I believe there was only one repeal request.</p> <p>13 I don't recall exactly how that was staff reported. I</p> <p>14 don't. I'm sorry.</p> <p>15 Q. Yeah, no worries.</p> <p>16 A. You might have an exhibit, I just don't</p> <p>17 remember.</p> <p>18 Q. How many recommendations did the city</p> <p>19 attorney's office make to either the Plan Commission or</p> <p>20 Common Council to recommend repeal of the master plan?</p> <p>21 MS. ZYLSTRA: Objection. Foundation.</p> <p>22 A. Yeah, I don't recall their communications</p> <p>23 either, specifically.</p> <p>24 (Exhibit 43 marked)</p> <p>25 Q. MR. INGRISANO: Sir, have you ever seen</p>
<p style="text-align: right;">Page 175</p> <p>1 staff report for a similar ask for a conditional use</p> <p>2 after the master plan had been repealed and we were</p> <p>3 recommending that the Plan Commission could, that they</p> <p>4 may be able to find that the standards were met.</p> <p>5 We didn't -- our staff position was relatively</p> <p>6 positive, I would argue, but we left the work to the</p> <p>7 Plan Commission to work out the final details.</p> <p>8 Q. But, again, my comment was not about your</p> <p>9 staff. We haven't talked about your staff yet.</p> <p>10 My question was about your understanding of</p> <p>11 the makeup of the Plan Commission and the Common</p> <p>12 Council.</p> <p>13 Do you really think that Edgewood could have</p> <p>14 had confidence that that Plan Commission, that Common</p> <p>15 Council was going to approve an amendment to their</p> <p>16 master plan that would have allowed them to get lights,</p> <p>17 sound, and stadium seating?</p> <p>18 MS. ZYLSTRA: Same objections.</p> <p>19 A. Once again, that's sort of my opinion, but I</p> <p>20 have been doing this job for quite sometime and I have</p> <p>21 seen people give and take to find solutions to things.</p> <p>22 And I guess I have faith in human nature, and</p> <p>23 I believe that people can work things out to an extent</p> <p>24 that everyone has some level of satisfaction.</p> <p>25 That's the way our city works. I mean, that's</p>	<p style="text-align: right;">Page 177</p> <p>1 Exhibit 43 before?</p> <p>2 A. Yes.</p> <p>3 Q. This is a recommendation, is it not, from</p> <p>4 Assistant City Attorney John Strange to the City of</p> <p>5 Madison Plan Commission, that they repeal the master</p> <p>6 plan?</p> <p>7 A. What is the question again?</p> <p>8 Q. I asked you, is this note a recommendation</p> <p>9 from the Assistant City Attorney John Strange to the</p> <p>10 Madison Plan Commission that they repeal the master</p> <p>11 plan?</p> <p>12 A. I'm just reading it, because it's detailed.</p> <p>13 Q. Sure. Let me withdraw that question.</p> <p>14 This is a memo from Mr. Strange to the City of</p> <p>15 Madison Plan Commission outlining considerations they</p> <p>16 should make and whether to recommend repeal; correct?</p> <p>17 A. I'm half of the way through the second page,</p> <p>18 and what I've read so far is consistent with that. I'm</p> <p>19 almost done.</p> <p>20 And then there is an article -- there's a</p> <p>21 letter, a second letter that -- did you not want me to</p> <p>22 read the Barry Blonien letter or do you want me to just</p> <p>23 focus on the John Strange memo?</p> <p>24 Q. If you think you need to review that to answer</p> <p>25 my question, go ahead.</p>

<p style="text-align: right;">Page 178</p> <p>1 A. Okay. And your question, just so I know 2 again, can you read to me again your question? 3 MR. INGRISANO: Yeah, please do. 4 (Record read) 5 A. Okay. So the letter from Mr. Strange is 6 matters of consideration for the Plan Commission to 7 consider. I don't think it's a recommendation to 8 repeal. I didn't read that in there. 9 But I did see in the Boardman letter from 10 Attorney Blonien's statement that it would strengthen 11 the city's position in the litigation by repealing 12 Edgewood's Master Plan. 13 If I was a Plan Commissioner, I'm not exactly 14 sure how I would read that besides recognizing the 15 words. 16 Q. Okay. 17 A. And it's very legalese, Mr. Blonien's letter 18 to Attorney Mike May and Attorney John Strange, and I'm 19 not a lawyer. I'm just not. So I would need to confer 20 with my attorneys about what they're saying. 21 Q. I didn't ask to you read it. You volunteered 22 to. 23 A. I know, I know, but I don't want to say 24 anything to it without reading it. 25 Q. I understand. I didn't like reading what</p>	<p style="text-align: right;">Page 180</p> <p>1 may be placed on the pending repeal request." 2 Do you see that? 3 A. Yes. 4 Q. Did you have any -- at the time that you 5 received and read this, did you formulate an opinion as 6 to whether you agreed or disagreed with that 7 recommendation? 8 A. I formulated an opinion that I agreed with the 9 recommendation, I recall, is what I recall. 10 Q. So based on that -- 11 A. If I could, I just -- I didn't recall if we 12 did a staff report, so thank you with providing me with 13 that when you asked me earlier an question if we had a 14 recommendation. 15 That helped me recall we did actually write a 16 staff report, and I didn't object to the position that 17 was being taken, yeah. 18 Q. Sure. In essence, based on Mr. Parks' 19 conclusion, is it fair to say that the process and 20 standard for repealing a master plan creates a lower 21 burden than the process for amending a master plan? 22 MS. ZYLSTRA: Object to the form. 23 A. The process for repealing a master plan is a 24 map amendment, to my understanding. The process to 25 repeal a master plan is a simple map amendment covered</p>
<p style="text-align: right;">Page 179</p> <p>1 Mr. Blonien wrote either. 2 MR. INGRISANO: Will you have that marked, 3 please. 4 (Exhibit 44 marked) 5 Q. I'm handing you what's been marked as Exhibit 6 44. I think I may have misspoken in an earlier question 7 when I assumed that Mr. Parks was part of your staff. 8 But this is a memo from Mr. Parks to the Plan 9 Commission dated October 28, 2019. Do you see that? 10 A. Yes. 11 Q. And do you recall receiving a copy of this 12 letter at or around the time of its date? 13 A. Yeah, I recall reviewing it or reading it or 14 seeing its publication, yes. 15 Q. And in the conclusion on page 3 of this 16 document, Mr. Parks concludes: 17 "In closing, the Planning Division believes 18 that the standards for zoning map amendments are met and 19 that the Plan Commission should recommend to the Common 20 Council that it approve Edgewood's request to repeal its 21 voluntary Campus Master Plan. As the proposed ordinance 22 repeals the previous land use approval granted in 2014 23 and any conditions of same and effectively returns the 24 Edgewood campus to the status it had prior to April 8, 25 2014, staff does not believe that conditions of approval</p>	<p style="text-align: right;">Page 181</p> <p>1 under the zoning map amendment section. 2 The process to amend a master plan refers to 3 the changes to master plan section, subsection 10 of 4 28.097 which has three alternatives. And those could be 5 more -- more complicated, more involved, and your words 6 -- I forgot what your words were again specifically. 7 Q. I think amendment being more burdensome 8 than repeal. 9 A. Well, more burdensome is tricky. I would say 10 it's definitely more complicated, definitely requires 11 more materials to be submitted. 12 An amendment implies a request for some 13 alteration and modification. A repeal is basically a 14 getting rid of the master plan and going to typical 15 conventional zoning. So, yes. 16 Q. But Edgewood's amendment of its master plan 17 would have required Plan Commission approval; correct? 18 A. It would require -- I believe it requires a 19 recommendation of the Plan Commission and Common Council 20 approval. 21 It was the third category of the amendment as 22 we had considered it, the changes to master plan 10. A 23 change constitutes a substantial alteration of the 24 original plan. The procedure at 28.097(6) is required. 25 That was the process that they applied for.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. Which one?</p> <p>2 A. The process of 28.097, paren 6.</p> <p>3 Q. Which provides what?</p> <p>4 A. It's the standards for master plan approval,</p> <p>5 Common Council will approve, and it goes to that</p> <p>6 section. So major change.</p> <p>7 Q. Got it. So it would have required Common</p> <p>8 Council approval to amend master plan?</p> <p>9 MS. ZYLSTRA: Object to form. Go ahead.</p> <p>10 A. Yes. We're talking about what they applied, I</p> <p>11 think, for December that they paused on in 2018-2019,</p> <p>12 yes.</p> <p>13 Q. So the City of Madison, after March 1 of 2019,</p> <p>14 with the decision to withhold the light permit, the city</p> <p>15 had communicated to Edgewood that they could amend the</p> <p>16 master plan to be able to get their lights; is that</p> <p>17 right?</p> <p>18 A. We communicated that back in November of 2018</p> <p>19 that they could amend for whatever they want to a amend</p> <p>20 for.</p> <p>21 Q. But it was reiterated to them after the March</p> <p>22 decision to withhold the permit, correct, to the best of</p> <p>23 your knowledge?</p> <p>24 A. Yeah, I don't know when -- I'm not sure about</p> <p>25 that communication.</p>	<p style="text-align: right;">Page 184</p> <p>1 concluding that he would recommend repeal of the master</p> <p>2 plan; correct?</p> <p>3 A. Yes.</p> <p>4 Q. So we've seen two memos from Mr. Parks</p> <p>5 recommending repeal of the master plan; correct?</p> <p>6 A. Yes.</p> <p>7 Q. We have seen one memo from Mr. Strange</p> <p>8 recommending repeal of the master plan; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And we have seen one memo from Mr. Strange</p> <p>11 outlining the standards that should be considered by the</p> <p>12 Plan Commission in whether to recommend repeal of the</p> <p>13 master plan; correct?</p> <p>14 A. Yes.</p> <p>15 (Exhibit 45 marked)</p> <p>16 Q. MR. INGRISANO: I'm handing you what's been</p> <p>17 marked as Exhibit 45.</p> <p>18 This is an excerpt of an email chain. It was</p> <p>19 originally attached as an exhibit to the complaint filed</p> <p>20 by Edgewood in this matter.</p> <p>21 Starting there in the middle of the page where</p> <p>22 it says "Forwarded message" is a message email from you</p> <p>23 to Brian Munson and Mike Elliot with various cc's;</p> <p>24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. So I'm handing you what's been marked as</p> <p>2 Exhibit 30.</p> <p>3 Have you seen Exhibit 30 before? Did you</p> <p>4 receive that document?</p> <p>5 A. Yes, I have seen this.</p> <p>6 Q. And did you receive it at or around the time</p> <p>7 that it was dated?</p> <p>8 A. Yeah, I would have seen it around then, yes.</p> <p>9 Q. And that document is a recommendation by John</p> <p>10 Strange to repeal the master plan; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Handing you what's been marked as Exhibit 29.</p> <p>13 That's an earlier memo from Mr. Parks, dated August 26,</p> <p>14 2019; correct?</p> <p>15 A. This one is August 22nd. This is August 26th,</p> <p>16 yeah.</p> <p>17 Q. But we saw the earlier -- we saw another memo</p> <p>18 from Mr. Parks to the --</p> <p>19 A. October 28th.</p> <p>20 Q. October 28.</p> <p>21 A. And then like, yeah, August 26, yeah. Yes, I</p> <p>22 see this.</p> <p>23 Q. So looking at the August 26 memo, the</p> <p>24 conclusion on the back page.</p> <p>25 He had reached the same conclusion in August</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. This date is dated October 26, 2018?</p> <p>2 A. Yep.</p> <p>3 Q. In the second paragraph, you write:</p> <p>4 "After the neighborhood meeting of the</p> <p>5 Wednesday, October 17, I became aware of the extensive</p> <p>6 use of the athletic field at the northwest corner of the</p> <p>7 site."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. You had previously referenced the October 17,</p> <p>11 2018 meeting as the meeting where you learned from a</p> <p>12 PowerPoint presented by Edgewood that they were using</p> <p>13 the field for games; is that right?</p> <p>14 A. Among other things, yes.</p> <p>15 Q. So with respect to Exhibit 46, sir, your --</p> <p>16 MR. INGRISANO: This is Exhibit 46, right?</p> <p>17 THE REPORTER: 45.</p> <p>18 Q. 45. I'm getting ahead of myself. Sorry about</p> <p>19 that. Exhibit 45, the email from you to Brian Munson</p> <p>20 and Mike Elliot.</p> <p>21 Your email says, "After the neighborhood</p> <p>22 meeting of Wednesday, October 17, I became aware of the</p> <p>23 extensive use of the athletic field."</p> <p>24 What happened after that meeting where the</p> <p>25 PowerPoint was presented that gave you awareness?</p>

<p style="text-align: right;">Page 186</p> <p>1 A. You know, I -- I think I meant "at" or "by"</p> <p>2 saying that. I'm sorry about that. I think that's what</p> <p>3 I meant was "at" the neighborhood meeting of that, I</p> <p>4 became aware of it.</p> <p>5 I will say that I remember this slide coming</p> <p>6 up and getting caught off guard with it. And I think</p> <p>7 they might have given me -- I might have asked them for</p> <p>8 the PowerPoint to confirm what I observed, and that</p> <p>9 might be why it says "after."</p> <p>10 But I just remember there being this quick,</p> <p>11 hey, here's what we're doing. And I'm like, wait a</p> <p>12 minute, that doesn't sound right.</p> <p>13 As I mentioned earlier with Shawn Schey, I</p> <p>14 want to be fair and respectful of people when I</p> <p>15 communicate with them. I want to know what I'm talking</p> <p>16 about. And that might be why I chose that word.</p> <p>17 Q. Okay.</p> <p>18 A. But it would be fair to say like I learned of</p> <p>19 it ostensibly at the October meeting and then got my</p> <p>20 hands on that PowerPoint that helped me understand.</p> <p>21 Q. Got it. And your email said, "I became aware</p> <p>22 of extensive use of the athletic field."</p> <p>23 What did you mean by "extensive use"?</p> <p>24 A. From what I recall, they had a long list of</p> <p>25 users of that field that they had presented that they</p>	<p style="text-align: right;">Page 188</p> <p>1 inconsistent with physical education classes and team</p> <p>2 practices, so the use of the field.</p> <p>3 Q. At the October 17 meeting were there any</p> <p>4 neighbors there that raised complaints about the use of</p> <p>5 the field?</p> <p>6 A. I don't recall. I honestly can't -- there was</p> <p>7 a lot of people that spoke. I don't recall what their</p> <p>8 speaking was at the meeting.</p> <p>9 Q. Prior to the October 17 meeting, had you</p> <p>10 received any complaints about Edgewood's use of its</p> <p>11 field for games or athletic competitions?</p> <p>12 A. No.</p> <p>13 Q. So after the neighborhood meeting it looks</p> <p>14 like you also closely reviewed the adopted master plan</p> <p>15 to determine how the language in the master plan relates</p> <p>16 to the athletic field usage; correct?</p> <p>17 A. I specifically looked at the Open Space Plan,</p> <p>18 actually just that page. I was focusing on that page.</p> <p>19 Q. So your closer review of the adopted master</p> <p>20 plan was limited to the Open Space Plan?</p> <p>21 A. That's what the next sentence -- I said</p> <p>22 specifically the Open Space Plan section.</p> <p>23 Q. Okay.</p> <p>24 A. Yes.</p> <p>25 Q. But you don't say you specifically only looked</p>
<p style="text-align: right;">Page 187</p> <p>1 had indicated were -- they were identifying were current</p> <p>2 uses of the field.</p> <p>3 And there were -- to me it appeared to be a</p> <p>4 pretty long list, the Madison 56ers, some coaches camp</p> <p>5 for some football sport thing, I don't -- quarterbacks</p> <p>6 or something. Was it UW track or something like that?</p> <p>7 Field hockey?</p> <p>8 There was a long list of things that were on</p> <p>9 this list and I used the term "extensive" because to me</p> <p>10 it seemed like it was an extensive list of uses, which</p> <p>11 is what I think they were intending to share when they</p> <p>12 presented that document.</p> <p>13 Q. Okay. Was it the "users" or the "uses." I've</p> <p>14 heard two different things from you that was disclosed</p> <p>15 on that slide.</p> <p>16 A. Probably both. I mean, it's users and uses.</p> <p>17 So yeah, I would say both.</p> <p>18 Q. And was it the use of the field as it was</p> <p>19 described or was it the extent of the use of the field</p> <p>20 that gave you the concern?</p> <p>21 A. I would say it was the use of the field. I'm</p> <p>22 just trying to figure out how "extent" makes it</p> <p>23 different there.</p> <p>24 That long list of uses that they identified,</p> <p>25 from my analysis of that page of the master plan, was</p>	<p style="text-align: right;">Page 189</p> <p>1 at the open space section. You say you closely looked</p> <p>2 at the adopted master plan. And then you say:</p> <p>3 "Specifically, in the Open Space Plan, Section</p> <p>4 3.8, the approve master plan identifies the athletics</p> <p>5 field to be used for team practices, physical education</p> <p>6 practices."</p> <p>7 A. Oh yeah.</p> <p>8 Q. "The lack of any further language in this</p> <p>9 section, or any other language in sections of the</p> <p>10 adopted master plan, leads me to the interpretation that</p> <p>11 current programming and usage of the field is operating</p> <p>12 outside of the allowance of the adopted master plan."</p> <p>13 Right?</p> <p>14 A. Correct. That sounds right, yeah. I must</p> <p>15 have looked at it a little more in depth. First salvo,</p> <p>16 we'll just say.</p> <p>17 Q. Sure. So your close review of the master plan</p> <p>18 in October of 2018, how did that compare to the fine</p> <p>19 toothed comb review that you did after March 1 of 2019?</p> <p>20 A. The March 2019 review, we were looking very</p> <p>21 closely at how the issuance of permits for lights would</p> <p>22 relate to the words in the master plan.</p> <p>23 I was focused in on the use of the athletic</p> <p>24 field as identified in my comments in 2018 here.</p> <p>25 Basically, this is sort of like putting them on notice</p>

<p style="text-align: right;">Page 190</p> <p>1 to be sure to include language in their amendment if 2 they want to make this type of stuff permanent and 3 allowable. 4 Q. So you reviewed the master plan in October of 5 the 2018, you reviewed it after March 1 of 2019, you 6 also reviewed it with John Strange in the five days 7 between February 22nd and February 27th; correct? 8 MS. ZYLSTRA: Object to form. You can answer. 9 A. Sure. I looked at it probably a few more 10 times than that, also, yes. 11 Q. The first time that you are relying upon the 12 lighting provisions of the master plan or the absence of 13 lighting provisions in the master plan was after the 14 fine toothed comb review after March 1 of 2019; correct? 15 A. Can you ask that again? 16 MR. INGRISANO: Sure. Can you read that back, 17 please. 18 (Record read) 19 A. I don't think so. I think we talked about 20 lighting as it related to the master plan in November 21 when we met with Brian Munson and Mike Elliot prior to 22 the submission of their request for alteration to build 23 the stadium, the grander project that was put on hold. 24 And there were follow-up conversations, you 25 know, when that -- you know, in preparation for the</p>	<p style="text-align: right;">Page 192</p> <p>1 So it's not just Section 3.8, Open Spaces. 2 There would be other sections that would need to be 3 amended. 4 MR. INGRISANO: Can you read back my question, 5 please. 6 (Record read) 7 Q. So what I'm saying, sir, is what you cited in 8 this email and what you cited in the February 27th 9 letter, what's in the four corners of the document is 10 3.8; is that right? 11 A. I'm specifically calling out and identifying 12 3.8 in that second paragraph, yes. 13 However, like, I'm also contemplating Section 14 3.1, Future Needs of Campus, on the second page: 15 Q. With the language that you're citing as being 16 inconsistent, the use of the field versus what's 17 provided in the master plan, is 3.8. 18 3.8 in your letter on 2/27, 3.8 in your email, 19 that's the language that Edgewood is violating by its 20 extensive use of the field; correct? 21 A. Yeah, so you're -- yes. 22 Q. Thank you. 23 MS. ZYLSTRA: Good time for a break? 24 MR. INGRISANO: Sure. 25 (Recess)</p>
<p style="text-align: right;">Page 191</p> <p>1 application being submitted. 2 I think they gave us a draft to make sure it 3 was thorough and complete. They wanted to -- I recall 4 them doing this, or maybe they met with us to do this to 5 share. 6 We wanted to make sure the draft was complete 7 so it had a thorough review, so that would be before 8 they submitted their application. 9 Q. Got it. But your concern cited in both this 10 Exhibit 45, as well as in your February 27, 2019 letter, 11 your concerns are based expressly on 3.8, Open Spaces; 12 correct? 13 A. Principally, yes. I believe that principally 14 that's where we would expect the language to be found 15 that would clearly allow for the field, the lighting of 16 the field, the uses and activities on the field. 17 I mean, it could be -- there are other 18 sections, like there is a section that talks about 19 buffer area along Woodrow and putting in lighting, that 20 would need to be revisited for effectiveness. 21 And I recall -- I'm starting to recall now 22 Mike Elliot and Brian Munson talking about things like 23 fencing and extensive landscaping along those areas, 24 because lighting is going to be introduced where it 25 isn't.</p>	<p style="text-align: right;">Page 193</p> <p>1 BY MR. INGRISANO: 2 Q. Back on. Mr. Tucker, to your knowledge, has 3 your department ever issued any citations or official 4 notices to the University of Wisconsin-Madison for using 5 property for use not specified in its master plan? 6 A. No. 7 Q. Has there ever been any effort by the city to 8 confirm whether UW is using its athletics and sports 9 recreational facilities or open spaces as they are 10 described in its master plan? 11 A. We respond to complaints. We haven't received 12 any complaints, so we haven't investigated to the best 13 of my knowledge. 14 Q. But you would agree that under the standards 15 that you have identified here today for what's required 16 in the master plan, that if a space is identified for a 17 particular use in the master plan it cannot be used for 18 a different purpose; is that right? 19 MS. ZYLSTRA: Object to form. 20 A. It should be used consistent with the language 21 in the master plan. I would say yes. And that's what 22 we would expect to see. So a different use would 23 probably be a violation, yes. 24 Q. So if a master plan designates a space to be 25 used --</p>

<p style="text-align: right;">Page 194</p> <p>1 Well, so basically the limitation on the use</p> <p>2 of any space or use is determined by the level of</p> <p>3 specificity in the master plan; is that fair?</p> <p>4 MS. ZYLSTRA: Objection. Form.</p> <p>5 A. We would expect to be able to look to the</p> <p>6 master plan to get clarification on the use and the</p> <p>7 improvement of a space, yes.</p> <p>8 Q. So if a space is designated as a flag football</p> <p>9 field it should be used for flag football?</p> <p>10 A. You would expect that if it had a level of</p> <p>11 specificity like that, like you said something about</p> <p>12 basketball earlier today, volleyball or basketball, is</p> <p>13 that what it was? Yeah, probably that's what we would</p> <p>14 look for.</p> <p>15 Q. Would you expect that a space labeled as being</p> <p>16 for recreation would be allowed to host collegiate</p> <p>17 varsity athletic competitions?</p> <p>18 MS. ZYLSTRA: Object to form. You can answer.</p> <p>19 A. Potentially.</p> <p>20 Q. Even though there are other places in a master</p> <p>21 plan that would be labeled as for athletics?</p> <p>22 A. Potentially, yeah. We would need to provide</p> <p>23 -- conduct a thorough review of that space and the words</p> <p>24 -- it's a hypothetical, but we like to look at these</p> <p>25 things in detail.</p>	<p style="text-align: right;">Page 196</p> <p>1 of Wisconsin production, Sarah.</p> <p>2 MS. ZYLSTRA: Okay.</p> <p>3 Q. 126, right column under where it says</p> <p>4 "Lakeshore Campus Design Neighborhood."</p> <p>5 A. Yes.</p> <p>6 Q. One, two, three -- third paragraph down:</p> <p>7 "The Near West Fields will soon be upgraded.</p> <p>8 The existing fields, at approximately 383,140 gross</p> <p>9 square feet, will be re-graded to create five synthetic</p> <p>10 turf flag football fields and one champion soccer</p> <p>11 field." And then it goes on to say, "A portion of the</p> <p>12 fields will function as a storm water management</p> <p>13 facility."</p> <p>14 Sir, with that level of specificity identified</p> <p>15 for the Near West Fields at Wisconsin, it would be your</p> <p>16 expectation that conformity with the master plan</p> <p>17 requires that that's how that space will actually be</p> <p>18 used?</p> <p>19 A. Yeah, I believe that's how they are describing</p> <p>20 it. The only part I would add is there might be another</p> <p>21 section that also refers to something about that field</p> <p>22 that I would need to -- I would need to look through the</p> <p>23 whole document to see like there is an open space</p> <p>24 section, and this is only the proposed facility</p> <p>25 condition section.</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. Have you looked at the UW master plan for its</p> <p>2 description of how open spaces, athletic recreational</p> <p>3 spaces are used?</p> <p>4 A. Yeah, as part of understanding, I have looked</p> <p>5 at the UW master plan, yeah, I've referenced it.</p> <p>6 (Exhibit 46 marked)</p> <p>7 Q. MR. INGRISANO: Sir, is this the UW</p> <p>8 Campus-Institutional District Master Plan that you are</p> <p>9 familiar with?</p> <p>10 A. I'm going to suspect, yeah, this is for the</p> <p>11 purposes of our -- yeah, this looks like the master</p> <p>12 plan.</p> <p>13 Mine has a binder on it or is in a PDF form,</p> <p>14 but it definitely appears like this. It's probably got</p> <p>15 my letter in here.</p> <p>16 Okay. I don't see my letter in here or the --</p> <p>17 well, do we --</p> <p>18 Q. For purposes of discussion I'm not going to</p> <p>19 make you say and swear under oath this is the one and</p> <p>20 only master plan.</p> <p>21 But turn to page 126, sir, of this Exhibit 46.</p> <p>22 A. These, the red numbers?</p> <p>23 Q. Yes, the bottom left. These were printed out</p> <p>24 before we had them Bates labeled.</p> <p>25 MR. INGRISANO: This is part of the University</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. But the whole part of the master plan review</p> <p>2 process would be to eliminate any inconsistencies;</p> <p>3 correct?</p> <p>4 MS. ZYLSTRA: Object to form.</p> <p>5 A. No, I don't think it's inconsistency; I think</p> <p>6 it's other sections where the use of that field may be</p> <p>7 covered. It could be consistent. I don't know.</p> <p>8 Q. But if it's inconsistent, it says the Near</p> <p>9 West Fields will be used for poetry readings. Now we've</p> <p>10 got inconsistency. And hopefully that would have been</p> <p>11 avoided prior to adoption, correct, or addressed just</p> <p>12 prior to adoption?</p> <p>13 MS. ZYLSTRA: Objection. Form.</p> <p>14 A. We do our best to try and clarify as much of</p> <p>15 this as we can, but it's not uncommon to find things</p> <p>16 that need clarification and correction and we would work</p> <p>17 with the responsible party to clarify that.</p> <p>18 That would be a typical process for this kind</p> <p>19 of thing.</p> <p>20 Q. Sir, let me ask you to turn to page 75. It's</p> <p>21 3.7, "Campus Land Use and Buildings."</p> <p>22 It's a color map, is it not?</p> <p>23 A. Yes. Is this the -- yes, yes.</p> <p>24 Q. So looking at the legend on this document, the</p> <p>25 buildings in red represent athletics buildings, correct,</p>



<p style="text-align: right;">Page 198</p> <p>1 bottom left of the document?</p> <p>2 A. Yeah, there is something called -- there is a</p> <p>3 classification that refers to it as athletics, yes.</p> <p>4 Q. And then there is a light green</p> <p>5 classification, a different classification for</p> <p>6 Recreation/Sports. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And because they are two different colors and</p> <p>9 described differently they represent different things,</p> <p>10 is that right, different uses?</p> <p>11 MS. ZYLSTRA: Object to form. You can answer.</p> <p>12 A. I would think there would be, yeah, some other</p> <p>13 reference to -- yeah, the differences in those colors in</p> <p>14 the plan.</p> <p>15 Q. Sir, the left side of this map as we are kind</p> <p>16 of moving up, so in kind of the --</p> <p>17 A. Could I just --</p> <p>18 Q. Yeah.</p> <p>19 A. Could I go back to that?</p> <p>20 Q. Sure.</p> <p>21 A. So, you know, I've been working, you know, for</p> <p>22 quite some time.</p> <p>23 Athletics is like a department, like a</p> <p>24 function, and this map might be reflective of like</p> <p>25 athletics responsibility. Like, you know the Kohl</p>	<p style="text-align: right;">Page 200</p> <p>1 partly why there is a distinction. And some of these</p> <p>2 aren't even in properties that are within the bounds of</p> <p>3 the Campus Master Plan.</p> <p>4 Q. Sure. But you're speculating right now as to</p> <p>5 the distinctions that are being drawn between those two</p> <p>6 things and you don't actually know; is that right?</p> <p>7 A. I recall doing some analysis and looking into</p> <p>8 some of these other facilities and being aware that they</p> <p>9 were places that -- you know, I'm sort of struggling a</p> <p>10 little bit on that.</p> <p>11 Like the tennis, the Nielsen Tennis and the</p> <p>12 swimming place over by Willow Creek and Observatory</p> <p>13 Drive that were places that were acknowledged in some</p> <p>14 form in the master plan as places where competitive</p> <p>15 sports and games may occur.</p> <p>16 We believe there was language in the master</p> <p>17 plan to support that. And they wouldn't be red. They</p> <p>18 are a different color on this map.</p> <p>19 Q. Yeah, in fact, Nielsen Tennis stadium on this</p> <p>20 map is coded green for recreation; correct?</p> <p>21 A. Which one is Nielsen?</p> <p>22 Q. You're not familiar? I'll represent to you</p> <p>23 that Nielsen Tennis is the light green building in the</p> <p>24 top left corner in the map.</p> <p>25 A. Oh, it's probably over by the orange thing?</p>
<p style="text-align: right;">Page 199</p> <p>1 Center is in here. Half of, interestingly, Camp</p> <p>2 Randall, but not all of it because there is a green</p> <p>3 piece there which is recreation/sports.</p> <p>4 So they have some distinction that they have</p> <p>5 written into this. There is also a red building at the</p> <p>6 end of a dead-end cul-de-sac. I'm not really sure what</p> <p>7 that's about.</p> <p>8 Q. But this is a map that by its terms relates to</p> <p>9 use. First line, "The campus has a clear existing</p> <p>10 building use pattern."</p> <p>11 3.7 is labeled "Campus Land Use and</p> <p>12 Buildings"; correct?</p> <p>13 A. Yes. What I'm getting at is, like the red</p> <p>14 buildings relate to like typically UW athletics, the</p> <p>15 Kohl Center, which is hockey, basketball, I believe, and</p> <p>16 then the Camp Randall which is football, and I think</p> <p>17 there is a softball.</p> <p>18 But there are a number of other things that</p> <p>19 relate to competition and activities that occur on the</p> <p>20 campus that are not UW sports teams.</p> <p>21 Q. Sure.</p> <p>22 A. And those could be like your example of flag</p> <p>23 football is a thing, or competitive soccer at the West</p> <p>24 Fields or whatever it was on the other page.</p> <p>25 So I just wanted to note that I think that's</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Yes.</p> <p>2 A. Okay. Thank you, yes.</p> <p>3 Q. And it's coded as recreation?</p> <p>4 A. In this plan it is on the map, it says</p> <p>5 recreation/sports.</p> <p>6 Q. And you know that varsity tennis competitions</p> <p>7 are held at Nielsen Tennis Complex; correct?</p> <p>8 A. I'm aware, I believe that's what happens</p> <p>9 there, yeah. Is this the UW varsity tennis team?</p> <p>10 Q. Are you aware of whether varsity tennis</p> <p>11 matches for the UW tennis team occur at the Nielsen</p> <p>12 Tennis stadium?</p> <p>13 A. I would have to look to see. That's a fair</p> <p>14 assumption, but I would really -- I'd like to see it to</p> <p>15 say it.</p> <p>16 Q. Are you aware of any athletic competitions</p> <p>17 that occur at the Natatorium that's coded in light green</p> <p>18 off of Observatory Drive?</p> <p>19 A. I'm not personally aware of any. I haven't</p> <p>20 been to any there.</p> <p>21 Q. Okay. You had mentioned before that UW does</p> <p>22 not pull electrical permits. Why is that?</p> <p>23 A. The university is -- my understanding is the</p> <p>24 university is a charter entity of the state similar to</p> <p>25 like the City of Madison, and the only local regulation</p>

<p style="text-align: right;">Page 202</p> <p>1 the university is required to comply with is our zoning 2 code.</p> <p>3 Q. When did you learn of an effort to amend the 4 Campus-Institutional District zoning code in 2019?</p> <p>5 A. Are you referring to them in the -- when they 6 got adopted in October?</p> <p>7 Q. Yes.</p> <p>8 A. I became aware of that -- I was aware of 9 discussions, I want to say, that dated back to maybe 10 July, around when we were looking -- when the zoning 11 board was hearing the interpretation. Possibly that far 12 -- that soon. I don't recall exactly.</p> <p>13 Q. Who were those discussions with?</p> <p>14 A. I was talking with Attorney Strange about it. 15 I had had some discussions with planning staff. There 16 was -- I recall some alderpersons asking me about it. 17 Are you curious --</p> <p>18 Q. Well, what alderpersons are you talking about?</p> <p>19 A. I recall -- I recall, obviously, Alder Evers, 20 Alder Bidar who had West High School in her district. I 21 recall Alder Keith Furman who has -- I believe he has 22 Memorial in his district.</p> <p>23 I'm trying to think who else there was. Those 24 were three -- those were the only three that I can 25 recall at this point.</p>	<p style="text-align: right;">Page 204</p> <p>1 the drafting of the language. I'll use the terms 2 principally to make sure it fit into the ordinance. So 3 it was administrable, it was clear, it was without 4 conflict with other sections, it was in the right place.</p> <p>5 Sometimes I would get involved in the words 6 that were chosen to result in the effect from the 7 standpoint of preparing legislation on behalf of an 8 alderperson for interaction.</p> <p>9 Q. Did you have that role with this amendment?</p> <p>10 A. I was consulted on the language, yes, for 11 similar reasons.</p> <p>12 Q. When?</p> <p>13 A. I don't recall when that was. It was sometime 14 in the process, because it -- they would have run it by 15 me to make sure it fit at some point.</p> <p>16 Q. Who is "they"?</p> <p>17 A. The city attorney or sponsoring alders. 18 Typically those are the people where text amendments 19 originate.</p> <p>20 Q. What do you recall -- who did you have contact 21 with regarding your input and thoughts on this 22 amendment?</p> <p>23 A. It would probably have been Attorney John 24 Strange. He would have been the key person that I 25 interacted with on this language.</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. I'm handing you what's marked as Exhibit 18, 2 sir.</p> <p>3 Do you recognize that as a master document 4 memorializing the adoption of an amendment to the 5 Campus-Institutional District zoning ordinance that was 6 effective, final action, October 1, 2019?</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever seen this document before?</p> <p>9 A. I have.</p> <p>10 Q. And this document references, if you look at 11 page 2 of this Exhibit 18, under "History of Legislative 12 File." First line, "Attorney's Office, 8/05/2019, 13 Referred for Introduction."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any involvement or knowledge of 17 the process beginning the referral for introduction for 18 this amendment?</p> <p>19 A. I honestly don't recall.</p> <p>20 Q. What role, if any, did you have in the process 21 of amending this ordinance?</p> <p>22 A. I believe the process that I would have had is 23 what the process I typically have with nearly all 24 ordinance amendments since I started the job as the 25 zoning administrator, which is I would be involved in</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. How about Alder Evers -- Evers?</p> <p>2 A. Evers.</p> <p>3 Q. At least he's not here to hear.</p> <p>4 A. One of the things I would just need to know is 5 any -- I would need to understand a little better is any 6 of the sponsors that were named would be -- I would have 7 a communication with because they all own a piece of it, 8 so to speak, and I need their authorization. I need to 9 communicate with them in regard to it because it's their 10 legislation.</p> <p>11 So whomever was the sponsors of it, and the 12 list of sponsors there probably need added at a later 13 date people wouldn't have been consulted at the front 14 end of the drafting. So I don't know who else.</p> <p>15 Q. Sure. When --</p> <p>16 A. Wait, excuse me. I do know that Shiva was 17 involved, Shiva Bidar, Alder Bidar, principally, because 18 she was watching the evolution of the Edgewood situation 19 knowing that she has West High School in her district.</p> <p>20 Q. You, again, were part of the group in the city 21 in 2011, 2012, 2013, if not before, that was working on 22 drafting the Campus-Institutional zoning ordinance; 23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. Yesterday in his deposition, I'll represent to</p>

<p style="text-align: right;">Page 206</p> <p>1 you that Alder Evers described this amendment that he  2 sponsored originally -- I'll represent to you he was the  3 original sole sponsor -- was designed to address what he  4 called a "flaw" or a "loophole" in the ordinance.  5 Would you agree with the characterization that  6 the ordinance that you assisted in drafting had a flaw  7 or a loophole that this ordinance was supposed to  8 address?  9 MS. ZYLSTRA: Object to form. You can answer.  10 A. I heard that from some -- from sponsors. I  11 heard that as part of my review of this amendment, yes.  12 Q. And the fix for the alleged flaw was the  13 language, revised ordinance.  14 MR. JEAN-LOUIS: Counsel, I believe it's the  15 same exhibit.  16 MR. INGRISANO: You know what, we could  17 probably just do that.  18 Q. So the flaw that you heard expressed was the  19 flaw that was ultimately remedied by -- if you look at  20 the second to the last page of this Exhibit 18, where it  21 says "Page 2" at the top. Do you see that?  22 A. Yes.  23 Q. "The Common Council of the City of Madison do  24 hereby ordain as follows."  25 If you look under the revised Section 2 Master</p>	<p style="text-align: right;">Page 208</p> <p>1 A. Right.  2 Q. So what you had basically is that (c) is no  3 longer the sole requirement there's been to close the  4 flaw or the loophole that Alder Evers and others are  5 complaining about is to add that additional requirement  6 so that the conditional use permit is not just related  7 to floor space but rather for any establishment,  8 improvement, or modification of any primary or secondary  9 use occurring outside of an enclosed building; correct?  10 A. Yes.  11 MS. ZYLSTRA: Late objection. Form. Go  12 ahead.  13 A. Sorry. Yes.  14 Q. So now, for the first time with this  15 amendment, we're seeing a restriction on modifications  16 of primary or secondary use, correct, whereas before it  17 was not use-related but rather only floor space related;  18 correct?  19 A. Yeah, the -- yes, the original -- it's hard to  20 see with the strike-throughs and the distinctions  21 between the two, but the amendment expands upon the  22 original trigger and adds the modification to primary  23 and secondary uses occurring outside of an enclosed  24 building requiring conditional use.  25 And it also gives me the ability to do minor</p>
<p style="text-align: right;">Page 207</p> <p>1 Plan Requirement, sub D:  2 "In a Campus-Institutional District without a  3 Campus Master Plan, the establishment, improvement, or  4 modification of any primary or secondary use occurring  5 outside of an enclosed building shall require  6 conditional use approval."  7 Do you see that?  8 A. Yes.  9 Q. Do you understand that that was the fix for  10 the alleged flaw?  11 MS. ZYLSTRA: Object to form. You can answer.  12 A. Yes, that was the intent of the sponsors.  13 Q. So previous to that, under the original  14 language of the master plan -- I'm sorry, of the  15 document, conditional use was only required where the  16 building floor space exceeded 4,000 square feet; is that  17 right?  18 A. That's correct.  19 Q. So what I'll call the 4,000 square feet floor  20 space provision, was it a flaw to have had that in the  21 original Campus-Institutional District ordinance?  22 MS. ZYLSTRA: Object to form, foundation. You  23 can answer.  24 A. No, it's -- no, because it's in (c).  25 Q. But (c), though, has been revised.</p>	<p style="text-align: right;">Page 209</p> <p>1 alterations and things like that.  2 Q. So do you agree with the characterization that  3 the original ordinance was flawed?  4 MS. ZYLSTRA: Objection. Form, asked and  5 answered.  6 Q. Let me withdraw the question. Let me ask you  7 this:  8 What governmental interests did the original  9 language advance?  10 MS. ZYLSTRA: Object to form, foundation. You  11 can answer.  12 A. What do you mean by "original language"?  13 Q. The original language before the amendment  14 occurred.  15 A. The --  16 MS. ZYLSTRA: Same objections.  17 A. The intent of the language in the master plan  18 in this section of this Campus-Institutional District  19 was an attempt to make a distinction between things that  20 were relatively minor and something that would -- or a  21 use or a -- excuse me, in this case a building expansion  22 that would trigger a greater community discussion  23 because of impacts on site, neighboring sites.  24 And the line in the sand that was drawn was a  25 4,000 square foot area limitation. And -- yeah, and I</p>


<p style="text-align: right;">Page 210</p> <p>1 believe that was -- I recall that being written into the 2 ordinance to create something that was allowed as 3 permitted in CI districts. 4 I recall the attorney at the time having 5 concerns about everything potentially being a 6 conditional use, which is why the 4,000 square foot was 7 allowed. 8 MS. ZYLSTRA: Wait. Same stipulation? To the 9 extent he was trying to reveal -- I couldn't tell if he 10 was revealing an attorney-client communication, which I 11 will object and pull it back. 12 MR. INGRISANO: Yeah, we don't know the 13 context. It could have been a public meeting. 14 MS. ZYLSTRA: I agree. That's why I -- 15 A. So we, you know -- 16 MS. ZYLSTRA: Mr. Tucker, I have to get a 17 stipulation from him not to waive the attorney-client -- 18 MR. INGRISANO: I'm talking -- well, I need to 19 -- 20 MS. ZYLSTRA: Do you want me to ask -- 21 Q. You just mentioned that an attorney was 22 talking about that. 23 In what context was an attorney talking about 24 that? Was it in a public meeting, were there other 25 people in the meeting that were not city employees?</p>	<p style="text-align: right;">Page 212</p> <p>1 4,000 square foot building addition. 2 MR. INGRISANO: Have that marked. 3 (Exhibit 47 marked) 4 Q. MR. INGRISANO: Sir, do you recognize this as 5 the Planning Division staff report dated March 24, 2014, 6 for the adoption of the Edgewood Campus-Institutional 7 District plan? 8 A. Isn't this already an exhibit? 9 Q. It might already be. 10 A. Okay. Yeah, I'm pretty sure we already have 11 this in here. 12 Q. I'm trying to expedite things rather than 13 digging through the stack. 14 A. I've got it as No. 39. 15 Q. Same document? 16 A. Well, this one has a -- I think so. It looks 17 like it. 18 MS. ZYLSTRA: I believe it's the same one. 19 A. One has a case number at the top and the 20 other -- 21 Q. Well, it's different documents so we will just 22 go with 47. 23 A. Okay. 24 Q. All right. I put this document in front of 25 you because starting on page 3, top left corner, it's</p>
<p style="text-align: right;">Page 211</p> <p>1 A. It was a public meeting. There were other 2 people in that, yeah. 3 MS. ZYLSTRA: Okay. Sorry. 4 THE WITNESS: I apologize, also. 5 MS. ZYLSTRA: No, go ahead. 6 A. So are you asking me when this happened, the 7 4,000 or -- 8 Q. No, my question originally was what 9 governmental interest was being furthered by that 10 language. 11 And what I've heard you say is, the 12 government, the city, had an interest in drawing a 13 distinction between substantial projects and less 14 substantial projects; is that fair? 15 MS. ZYLSTRA: Same objection as far as 16 foundation. You can answer. 17 A. I mean, I would take it back to the Statement 18 of Purpose for the district really, which speaks to the 19 intent of the district. 20 And then a line was drawn at allowing a 4,000 21 square foot building addition as the difference between 22 permitted and conditional uses. 23 So the Statement of Purpose is kind of what 24 drives the -- you know, the compelling governmental 25 interest to have a conditional use process for a new</p>	<p style="text-align: right;">Page 213</p> <p>1 got the original language from the Campus-Institutional 2 District ordinance; correct? 3 A. I'm seeing it in the fourth page. 4 Q. Top of page 3 -- or I'm sorry, bottom of page 5 3, Statement of Purpose. 6 A. Yes, starts at the bottom of page 3 and 7 extends it to page 4 and 5. 8 Q. And so we're talking about sub 2, sub C: 9 "In a Campus-Institutional District without a 10 Campus Master Plan, individual development proposals and 11 changes that exceed 4,000 square feet in gross floor 12 area within any 5-year period shall require conditional 13 use approval." Correct? 14 A. Yes. 15 Q. So that language was incorporated into this 16 document, from your recollection, intentionally? 17 A. The staff report? 18 Q. No, in the ordinance. 19 A. Oh, yeah. That was the language written in 20 the ordinance. I don't know -- I mean, yes, it was 21 intentionally written in the ordinance. 22 Q. And gross floor area, is that a defined term? 23 A. I believe it is defined in the zoning code, 24 yes. 25 Q. How is that defined?</p>

<p style="text-align: right;">Page 214</p> <p>1 A. It's a complicated definition. It basically 2 talks about area between the exterior walls, and there 3 is some exclusions like stairwells and unoccupied 4 basements. I would have to read the extensive 5 definition in Section 28.211. 6 Q. Got it. So the original subsection 2(c) of 7 that statute was not, in your estimation, something that 8 would have been haphazardly drafted; is that fair? 9 MS. ZYLSTRA: Object to form. You can answer. 10 A. The intent -- yeah, the intent of adding that 11 section was -- in its words, was deliberate in 12 consideration of development. 13 Q. Did you ever hear anyone say that this 14 amendment in October 2019 was intended to specifically 15 address Edgewood in light of its attempts to repeal its 16 master plan? 17 A. Not that I recall. I recall there being the 18 -- you know, the relative -- well, I don't know how to 19 say it. 20 I think what happened was the ongoing 21 conversations about the status of places are zoned CI 22 and the city was looking -- I mean, I was being asked 23 broadly about all places zoned CI, which is more than 24 Edgewood, and under what rules they would be operating 25 absent a master plan.</p>	<p style="text-align: right;">Page 216</p> <p>1 A. And that's -- yep, okay, on page 6? 2 Q. Yes. 3 A. Okay. 4 Q. Your memo recognizes that the standards is one 5 of a substantially impaired or diminished -- 6 Standard 3 says, "The uses, values and 7 enjoyment of other property in the neighborhood for 8 purposes already established will not be substantially 9 impaired or diminished in any foreseeable manner." 10 Correct? 11 A. Yes. 12 Q. And in Exhibit 33, you and Mr. Parks concluded 13 that the proposed conditions that you would impose on an 14 approval for Edgewood's conditional use, that those 15 minimized the impairments to any neighboring properties; 16 is that fair? 17 A. Just to be clear, I wrote, I was part -- I 18 have been part of almost no staff reports for 19 conditional use. So it was not an area of my expertise, 20 that aspect of it. 21 My area of expertise is about enforcement. My 22 name is on this report, and I know that, but that's not 23 my area of expertise. 24 Mr. Parks and the planning staff are the folks 25 that lead that. My participation in this rare</p>
<p style="text-align: right;">Page 215</p> <p>1 And Edgewood was one of those places, as was 2 West High School, who approached us on a capital 3 improvement project at the school. 4 Q. Do you have Exhibit 33 in front of you? 5 A. I can find it. I'm not seeing it in front of 6 me. What is it? 7 Q. It's the May 11, 2020 planning staff report. 8 A. Is this the conditional use? 9 Q. Yes. 10 A. I don't know if you gave that to me. 11 Q. I don't think I have given that to you. Oh, 12 there it is. I'm handing you what's been marked as 13 Exhibit 33, sir. 14 Do you recognize that as a planning staff 15 report dated May 11, 2020 that you were a co-author of? 16 A. This is the report, but I was -- and I am 17 listed as a co-author on this, as a "prepared by." 18 Q. And you did, in fact, prepare that document? 19 A. Yep, I participated with Mr. Parks in the 20 preparation of it, yes. 21 Q. And by listing yourself as a preparer on the 22 document you agreed with all of its contents? 23 A. Yeah. 24 Q. Looking at the standard for conditional use 25 approval, standard No. 3.</p>	<p style="text-align: right;">Page 217</p> <p>1 opportunity to share my name on a staff report was 2 related to enforceable conditions, how they might work, 3 how that might work. 4 So I'm just not an expert in that and those 5 folks do it on a daily -- on a bi-weekly basis. 6 Q. On page 5 at the bottom of that document, last 7 paragraph. 8 A. Yes. 9 Q. The middle of paragraph beginning, "However, 10 by limiting the number of events that occur in the 11 complex during the evening, the commission may create a 12 balance between the desire by Edgewood High School to 13 use its athletic complex for evening sporting events and 14 minimizing" -- which is italicized -- "impacts on the 15 residential neighborhoods that border the institution on 16 three sides consistent with Statement of Purpose for the 17 Campus-Institutional zoning district excerpted above." 18 A. I'm sorry, I'm on the bottom of page 5, and 19 it's page 5 of 10 on top and it says -- 20 Q. I'm sorry, I'm on page 5 of the memo. Top 21 left corner, page 6 of 10. 22 A. All right. Okay. Thanks. 23 Q. So read it yourself where it says "However." 24 A. Uh-huh. Yes. 25 Q. So the understanding of this memo, and</p>



<p style="text-align: right;">Page 218</p> <p>1 particularly Mr. Parks and his staff, was that the  2 conditions imposed would relate to and have the effect  3 of helping to minimize any impacts or impairments on the  4 neighboring properties; correct?  5 A. Yes.  6 Q. In looking at this from an enforcement  7 standpoint, did you see any code violations relating to  8 Madison's noise ordinances would have -- would  9 permitting approval of this conditional use permit  10 subject to the conditions that were outlined there,  11 would that have the effect of nevertheless still  12 violating Madison's noise ordinances, to your knowledge?  13 MS. ZYLSTRA: Object to form. You can answer.  14 A. Madison's noise ordinance that relates to  15 this, the use of this facility, is a disturbing the  16 peace ordinance administered by the police department  17 and they would be the ones that would be responsible for  18 that.  19 And as part of my ongoing and lengthy  20 involvement in this, had discussions with the Madison  21 Police Department that investigate noise complaints, and  22 they reiterated to me that if the city was going to  23 approve a place to have night games, athletic games,  24 WIAA sport contests, those activities, they would not  25 consider the typical normal activities to be a</p>	<p style="text-align: right;">Page 220</p> <p>1 But the noise generated associated with events  2 is managed under -- effectively if they are disturbing  3 the peace, by the police department.  4 Q. Got it. The staff involved with Exhibit 33  5 recognized in that document that there had been  6 historical noise complaints; correct?  7 A. You're asking if I knew they were noise  8 complaints?  9 Q. No, the staff in this report recognized there  10 had been historical noise complaints.  11 A. Are you pointing me to a section where I can  12 say there were noise complaints?  13 Q. I will in a minute.  14 A. Okay. I mean, I know there were noise  15 complaints.  16 Q. Sure. Well, even based on your own knowledge,  17 despite you knowing there were noise complaints, that  18 did not prevent you from recommending approval with  19 conditions; correct?  20 A. No, it did not prevent us from recommending  21 approval. People can complain about anything.  22 Q. And they do.  23 A. They sure as hell do.  24 Q. Sir, part of your job is to interpret  25 Madison's zoning ordinances; correct?</p>
<p style="text-align: right;">Page 219</p> <p>1 disturbing the peace.  2 However, if they had like a -- did a  3 ridiculously loud band at 11:00 o'clock after a game or  4 something like that, they would come and shut them down.  5 But the noise ordinance that's applicable here  6 is not the noise ordinance that my office administers.  7 It's the disturbing the peace noise ordinance at the  8 police department.  9 Q. What noise ordinance does your office  10 administer?  11 A. We are responsible for the noise ordinance  12 that relates to point of sound-generating noise, such as  13 equipment. Think of compressors, generators, fans,  14 those types of things that are fixed noise pieces on the  15 ground, vacuums, that we measure the amount of noise at  16 the receiving property line and at the exiting property  17 line in some other cases.  18 Q. So there is no objectively drawn Madison noise  19 ordinance, for example, that says you shall not create a  20 noise louder than X number of decibels at a particular  21 time or place?  22 MS. ZYLSTRA: Object to form. You can answer.  23 A. There is the noise ordinance I just described,  24 which is the equipment noise ordinance which absolutely  25 says that.</p>	<p style="text-align: right;">Page 221</p> <p>1 A. Yes.  2 Q. Are there any rules or presumptions that are  3 supposed to guide you in that endeavor that you're aware  4 of?  5 MS. ZYLSTRA: Objection. Form. You can  6 answer.  7 A. Yes, there are.  8 Q. And can you identify those for me?  9 A. I would have to have a section of the  10 ordinance in front of me. There is some words that talk  11 about conflicting ordinances, I think, plural, the word  12 "shall" means "shall" and may mean -- you know, those  13 types of things. I would need to see that section.  14 It's sort of rules of interpretation.  15 Q. Got it. Anything outside of what's actually  16 in the code and its rules of interpretation section?  17 A. That does what again?  18 Q. That guides or governs your interpretation of  19 Madison's land use ordinances.  20 MS. ZYLSTRA: Objection. Form. You can  21 answer.  22 A. Yes, I think I'm understanding. But like  23 state and federal law, there are times when we are  24 advised by our attorneys about case law that may  25 conflict with Madison general ordinance.</p>

<p style="text-align: right;">Page 222</p> <p>1 Things that are along that line of regulation</p> <p>2 that we would take into consideration and interpretation</p> <p>3 of the application of the ordinance.</p> <p>4 Q. How about kind of a rule of interpretation</p> <p>5 that ordinances should be interpreted and applied with a</p> <p>6 bias towards the free use of property?</p> <p>7 MS. ZYLSTRA: Object to form. You can answer.</p> <p>8 A. I don't know about that. I'm not aware of --</p> <p>9 what is it again?</p> <p>10 Q. Bias towards the free use of property. That</p> <p>11 when dealing with two possible interpretations of an</p> <p>12 ordinance you should choose the one that is biased</p> <p>13 towards and in favor of the free use of property.</p> <p>14 MS. ZYLSTRA: Same objection.</p> <p>15 A. When you're in a point of conflict?</p> <p>16 Q. Yes.</p> <p>17 A. I'm not generally familiar -- I haven't</p> <p>18 encountered that rule.</p> <p>19 Q. Can you identify for me, please, the objective</p> <p>20 characteristics the city wishes to promote or preserve</p> <p>21 in the Campus-Institutional District zoning ordinance?</p> <p>22 MS. ZYLSTRA: Object to form.</p> <p>23 Q. Beyond what may be in the Statement of</p> <p>24 Purpose.</p> <p>25 MS. ZYLSTRA: Same objection.</p>	<p style="text-align: right;">Page 224</p> <p>1 BY MS. ZYLSTRA:</p> <p>2 Q. You got asked early in the day some questions</p> <p>3 with respect to parking lots; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Outside of what you do in terms of zoning with</p> <p>6 respect to parking lots, are you aware of other</p> <p>7 ordinances and regulations that relate to lighting of</p> <p>8 parking lots?</p> <p>9 MR. INGRISANO: Objection. Form. Leading.</p> <p>10 A. Yes.</p> <p>11 Q. I'll rephrase that.</p> <p>12 Are there -- do you know whether other</p> <p>13 regulations or ordinances exist as it relates to parking</p> <p>14 lot lighting?</p> <p>15 MR. INGRISANO: Objection. Form, leading.</p> <p>16 MS. ZYLSTRA: It's not leading.</p> <p>17 Q. Go ahead.</p> <p>18 A. Yes.</p> <p>19 Q. What are you aware of, sir?</p> <p>20 A. There is a requirement that I believe it is</p> <p>21 parking -- parking facilities with more than -- and I'm</p> <p>22 guessing here -- either three, four, or five, but it's</p> <p>23 one of those three stalls are required to be lit.</p> <p>24 Q. And with respect to the staff report that you</p> <p>25 were just talking about with respect to Exhibit 33, I</p>
<p style="text-align: right;">Page 223</p> <p>1 A. So the zoning code itself has an overall</p> <p>2 Statement of Purpose, and I would look to that to</p> <p>3 provide us with direction.</p> <p>4 Q. Okay. Beyond the Statement of Purpose in that</p> <p>5 ordinance and the Statement of Purpose in the ordinances</p> <p>6 at large, that would be your answer?</p> <p>7 A. What was it again, the question?</p> <p>8 Q. Well, the question was, can you identify the</p> <p>9 objective characteristics the city wishes to promote or</p> <p>10 preserve in the Campus-Institutional District zoning</p> <p>11 ordinance?</p> <p>12 MS. ZYLSTRA: Same objections.</p> <p>13 A. I'm not sure if I exactly understand that</p> <p>14 question.</p> <p>15 So I'll stand on my answer that I find the</p> <p>16 Statement of Purpose gives us the most policy direction</p> <p>17 on the rules of the city for this district and the</p> <p>18 zoning code in its entirety.</p> <p>19 MR. INGRISANO: All right. I've got no</p> <p>20 further questions.</p> <p>21 MS. ZYLSTRA: I just have one or two</p> <p>22 clarifications.</p> <p>23 ///</p> <p>24 ///</p> <p>25 EXAMINATION</p>	<p style="text-align: right;">Page 225</p> <p>1 thought I heard earlier in the day -- well, let me</p> <p>2 strike that and start again.</p> <p>3 Was it your understanding that the staff</p> <p>4 report was determining that the conditions could be</p> <p>5 found to be met or that they were met?</p> <p>6 A. We don't find conditions to be met or not. We</p> <p>7 provide a recommendation to the Plan Commission on if</p> <p>8 they can find standards to be met.</p> <p>9 Q. And the recommendation was whether they could</p> <p>10 be found to be met or that they were met, if you know?</p> <p>11 MR. INGRISANO: Objection. Form.</p> <p>12 A. The words in there say that the Planning</p> <p>13 Division believes that the Plan Commission can find, so</p> <p>14 we're recommending that they could find the standards to</p> <p>15 be met for conditional use.</p> <p>16 MS. ZYLSTRA: Okay. No further questions. We</p> <p>17 would like to reserve the right to read and sign.</p> <p>18 MR. INGRISANO: Um --</p> <p>19 MS. ZYLSTRA: Oh, I'm sorry, sir.</p> <p>20 MR. INGRISANO: We're good. Thank you.</p> <p>21 MS. ZYLSTRA: Sorry. Reserve the right to</p> <p>22 read and sign. Thank you.</p> <p>23 (Deposition adjourned at 5:23 p.m.)</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 226</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Cheri Winter, a Certified Shorthand</p> <p>4 Reporter, Notary Public in and for the State of</p> <p>5 Wisconsin, do hereby certify that the foregoing</p> <p>6 deposition was taken before me, on the 29th day of April</p> <p>7 2022; that it was taken at the request of the Plaintiff;</p> <p>8 that it was taken in shorthand by me, a competent court</p> <p>9 reporter and disinterested person, approved by all</p> <p>10 parties in interest, and thereafter converted to</p> <p>11 typewriting using computer-aided transcription; that</p> <p>12 said deposition is a true record of the deponent's</p> <p>13 testimony; that the deposition was taken pursuant to</p> <p>14 Notice, that said MATTHEW TUCKER, before examination was</p> <p>15 sworn by me to testify to the truth, the whole truth,</p> <p>16 and nothing but the truth relative to said cause.</p> <p>17 Dated May 12, 2022.</p> <p>18</p> <p>19 </p> <p>20 Cheri Winter</p> <p>21 Notary Public</p> <p>22 State of Wisconsin</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 228</p> <p>1 DEPOSITION REVIEW</p> <p>2 CERTIFICATION OF WITNESS</p> <p>3</p> <p>4 ASSIGNMENT REFERENCE NO: 5188353</p> <p>5 CASE NAME: Edgewood High School of The Sacred Heart, Inc. v.</p> <p>6 City of Madison Wisconsin, et al.</p> <p>7 DATE OF DEPOSITION: 4/29/2022</p> <p>8 WITNESS' NAME: Matthew Tucker</p> <p>9 In accordance with the Rules of Civil</p> <p>10 Procedure, I have read the entire transcript of</p> <p>11 my testimony or it has been read to me.</p> <p>12 I have made no changes to the testimony</p> <p>13 as transcribed by the court reporter.</p> <p>14</p> <p>15 Date _____ Matthew Tucker</p> <p>16 Sworn to and subscribed before me, a</p> <p>17 Notary Public in and for the State and County,</p> <p>18 the referenced witness did personally appear</p> <p>19 and acknowledge that:</p> <p>20</p> <p>21 They have read the transcript;</p> <p>22 They signed the foregoing Sworn</p> <p>23 Statement; and</p> <p>24 Their execution of this Statement is of</p> <p>25 their free act and deed.</p> <p>I have affixed my name and official seal</p> <p>this _____ day of _____, 20____.</p> <p>Notary Public</p> <p>Commission Expiration Date _____</p>
<p style="text-align: right;">Page 227</p> <p>1 Veritext Legal Solutions</p> <p>2 1100 Superior Ave</p> <p>3 Suite 1820</p> <p>4 Cleveland, Ohio 44114</p> <p>5 Phone: 216-523-1313</p> <p>6 May 12, 2022</p> <p>7 To: Sarah Zylstra, Esq.</p> <p>8 Case Name: Edgewood High School of The Sacred Heart, Inc. v.</p> <p>9 City of Madison Wisconsin, et al.</p> <p>10 Veritext Reference Number: 5188353</p> <p>11 Witness: Matthew Tucker Deposition Date: 4/29/2022</p> <p>12 Dear Sir/Madam:</p> <p>13 Enclosed please find a deposition transcript. Please have the witness</p> <p>14 review the transcript and note any changes or corrections on the</p> <p>15 included errata sheet, indicating the page, line number, change, and</p> <p>16 the reason for the change. Have the witness' signature notarized and</p> <p>17 forward the completed page(s) back to us at the Production address</p> <p>18 shown</p> <p>19 above, or email to production-midwest@veritext.com.</p> <p>20 If the errata is not returned within thirty days of your receipt of</p> <p>21 this letter, the reading and signing will be deemed waived.</p> <p>22 Sincerely,</p> <p>23 Production Department</p> <p>24</p> <p>25 NO NOTARY REQUIRED IN CA</p>	<p style="text-align: right;">Page 229</p> <p>1 DEPOSITION REVIEW</p> <p>2 CERTIFICATION OF WITNESS</p> <p>3</p> <p>4 ASSIGNMENT REFERENCE NO: 5188353</p> <p>5 CASE NAME: Edgewood High School of The Sacred Heart, Inc. v.</p> <p>6 City of Madison Wisconsin, et al.</p> <p>7 DATE OF DEPOSITION: 4/29/2022</p> <p>8 WITNESS' NAME: Matthew Tucker</p> <p>9 In accordance with the Rules of Civil</p> <p>10 Procedure, I have read the entire transcript of</p> <p>11 my testimony or it has been read to me.</p> <p>12 I have listed my changes on the attached</p> <p>13 Errata Sheet, listing page and line numbers as</p> <p>14 well as the reason(s) for the change(s).</p> <p>15 I request that these changes be entered</p> <p>16 as part of the record of my testimony.</p> <p>17</p> <p>18 I have executed the Errata Sheet, as well</p> <p>19 as this Certificate, and request and authorize</p> <p>20 that both be appended to the transcript of my</p> <p>21 testimony and be incorporated therein.</p> <p>22</p> <p>23 Date _____ Matthew Tucker</p> <p>24 Sworn to and subscribed before me, a</p> <p>25 Notary Public in and for the State and County,</p> <p>the referenced witness did personally appear</p> <p>and acknowledge that:</p> <p>They have read the transcript;</p> <p>They have listed all of their corrections</p> <p>in the appended Errata Sheet;</p> <p>They signed the foregoing Sworn</p> <p>Statement; and</p> <p>Their execution of this Statement is of</p> <p>their free act and deed.</p> <p>I have affixed my name and official seal</p> <p>this _____ day of _____, 20____.</p> <p>Notary Public</p> <p>Commission Expiration Date _____</p>

<div style="text-align: right; margin-bottom: 10px;">Page 230</div> <div style="text-align: center;"> <p>ERRATA SHEET</p> <p>VERITEXT LEGAL SOLUTIONS MIDWEST</p> <p>ASSIGNMENT NO: 5188353</p> </div> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%; text-align: left;">3</th> <th style="width: 40%; text-align: left;">PAGE/LINE(S) /</th> <th style="width: 30%; text-align: left;">CHANGE</th> <th style="width: 20%; text-align: left;">/REASON</th> </tr> </thead> <tbody> <tr><td>4</td><td colspan="3"><hr/></td></tr> <tr><td>5</td><td colspan="3"><hr/></td></tr> <tr><td>6</td><td colspan="3"><hr/></td></tr> <tr><td>7</td><td colspan="3"><hr/></td></tr> <tr><td>8</td><td colspan="3"><hr/></td></tr> <tr><td>9</td><td colspan="3"><hr/></td></tr> <tr><td>10</td><td colspan="3"><hr/></td></tr> <tr><td>11</td><td colspan="3"><hr/></td></tr> <tr><td>12</td><td colspan="3"><hr/></td></tr> <tr><td>13</td><td colspan="3"><hr/></td></tr> <tr><td>14</td><td colspan="3"><hr/></td></tr> <tr><td>15</td><td colspan="3"><hr/></td></tr> <tr><td>16</td><td colspan="3"><hr/></td></tr> <tr><td>17</td><td colspan="3"><hr/></td></tr> <tr><td>18</td><td colspan="3"><hr/></td></tr> <tr><td>19</td><td colspan="3"><hr/></td></tr> <tr><td colspan="4"> </td></tr> <tr> <td>20</td> <td>Date</td> <td colspan="2">Matthew Tucker</td> </tr> <tr> <td>21</td> <td colspan="3">SUBSCRIBED AND SWORN TO BEFORE ME THIS _____</td> </tr> <tr> <td>22</td> <td colspan="3">DAY OF _____, 20____.</td> </tr> <tr> <td>23</td> <td colspan="3"><hr/></td> </tr> <tr> <td></td> <td colspan="3" style="text-align: center;">Notary Public</td> </tr> <tr><td>24</td><td colspan="3"><hr/></td></tr> <tr> <td>25</td> <td colspan="3"><hr/></td> </tr> <tr> <td></td> <td colspan="3" style="text-align: center;">Commission Expiration Date</td> </tr> </tbody> </table>	3	PAGE/LINE(S) /	CHANGE	/REASON	4	<hr/>			5	<hr/>			6	<hr/>			7	<hr/>			8	<hr/>			9	<hr/>			10	<hr/>			11	<hr/>			12	<hr/>			13	<hr/>			14	<hr/>			15	<hr/>			16	<hr/>			17	<hr/>			18	<hr/>			19	<hr/>			 				20	Date	Matthew Tucker		21	SUBSCRIBED AND SWORN TO BEFORE ME THIS _____			22	DAY OF _____, 20____.			23	<hr/>				Notary Public			24	<hr/>			25	<hr/>				Commission Expiration Date			
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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